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Briefing on How To Use the Federal Register
For information on a briefing in Atlanta, GA, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

WHEN: September 17, at 9:00 a.m.
WHERE: Centers for Disease Control
1600 Clifton Rd., NE.
Auditorium A
Atlanta, GA (Parking available)
RESERVATIONS: (404-639-3528 (Atlanta area))
1-800-347-1997 (outside Atlanta area)

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11 and 25

RIN 3150-AE32

Access Authorization Fee Schedule for Licensee Personnel

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to revise the fee schedule for background investigations of licensee personnel who require access to National Security Information and/or Restricted Data and access to or control over Special Nuclear Material. These amendments comply with current regulations that provide that NRC will publish fee adjustments concurrent with notifications of any changes in the rate charged the NRC by the Office of Personnel Management (OPM) for conducting investigations. This rule also inserts full identification (NRC Form number and name) of several forms used in the NRC personnel security process.

EFFECTIVE DATE: October 13, 1992.

FOR FURTHER INFORMATION CONTACT: Duane G. Kidd, Assistant to the Director, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–4127.

SUPPLEMENTARY INFORMATION: The OPM conducts access authorization background investigations for the NRC and sets the rate charged for these investigations. Effective October 1, 1992, OPM will increase the rate it charges NRC for conducting access authorization background investigations. Because the fees that NRC charges its licensees for material access authorizations and personnel security clearances are determined by the rates charged by OPM for conducting the background investigations, the fee schedules in NRC regulations must be amended to reflect the OPM rate increase. OPM is increasing the rate it charges for background investigations by approximately 15 percent. NRC is passing this additional cost to licensees. These changes comply with current regulations that provide that NRC will publish fee adjustments concurrent with notification of any changes in the rate charged the NRC by OPM for conducting the investigations. This rule also inserts full identification (NRC Form number and name) of several forms used in the NRC personnel security process into §§ 25.21(b) and 25.27. The previous text contained only the name or the form number, but not both.

Because these amendments deal solely with agency practice and procedure, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A).

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0046 and 3150–0062.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Duane G. Kidd, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492–4127.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, applies to this rulemaking initiative because it falls within the criteria of 10 CFR 50.109(a)(1), but that a backfit analysis is not required because this rulemaking qualifies for exemption under 10 CFR 50.109(a)(4)(iii) that reads "That the regulatory action involves * * * redefining what level of protection to the * * * common defense and security should be regarded as adequate."

List of Subjects

10 CFR Part 11

Hazardous materials—transportation, Investigations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 25

Classified information, Criminal penalty, Investigations, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 11 and 25.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

1. The authority citation for part 11 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).
Section 11.15(e) also issued under sec. 501, 85 Stat. 290 (31 U.S.C. 483a).

2. In § 11.15 paragraph (e)(1) is revised to read as follows:

§ 11.15 Application for special nuclear material access authorization.

* * * * *

(e)(1) Each application for special nuclear material access authorization, renewal, or change in level must be accompanied by the licensee's remittance, payable to the U.S. Nuclear

Regulatory Commission, according to the following schedule:

i. NRC–U requiring full field investigation	$3,000
ii. NRC–U requiring full field investigation (expedited processing)	3,400
iii. NRC–U based on certification of comparable full field background investigation	[1] 0
iv. NRC–U or R renewal	[1] 52
v. NRC–R	[1] 52
vi. NRC–R based on certification of comparable investigation	[2] 0

* * * * *

[1] If the NRC determines, based on its review of available data, that a full field investigation is necessary, a fee of $3,000 will be assessed prior to the conduct of the investigation.

[2] If the NRC determines, based on its review of available data, that a National Agency Check and Credit investigation is necessary, a fee of $52.00 will be assessed prior to the conduct of the investigation; however, if a full field investigation is deemed necessary by the NRC, based on its review of available data, a fee of $3,000 will be assessed prior to the conduct of the investigation.

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

3. The authority citation for part 25 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242 as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 25.13, 25.17(a), 25.33 (b) and (c) are issued under sec. 161i, 68 Stat. 949, as amended, (42 U.S.C. 2201(i)); and §§ 25.13 and 25.33(b) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 25.21 paragraph (b) is revised to read as follows:

§ 25.21 Determination of initial and continued eligibility for access authorization.

* * * * *

(b) The NRC Division of Security must be promptly notified of developments that bear on continued eligibility for access authorization throughout the period for which the authorization is active (e.g., persons who marry subsequent to the completion of a personnel security packet must report this change by submitting a completed NRC Form 354, "Data Report on Spouse").

5. Section 25.27 is revised to read as follows:

§ 25.27 Reopening of cases in which requests for access authorizations are cancelled.

(a) In conjunction with a new request for access authorization (NRC Form 237) for individuals whose cases were previously cancelled, new fingerprint cards (FD–257) in duplicate and a new Security Acknowledgment (NRC Form 176) must be furnished to the NRC Division of Security along with the request.

(b) Additionally, if 90 days or more have elapsed since the date of the last Questionnaire for Sensitive Positions (SF–86), the individual must complete a personnel security packet (see § 25.17(c)). The NRC Division of Security, based on investigative or other needs, may require a complete personnel security packet in other cases as well. A fee, equal to the amount paid for an initial request, will be charged only if a new or updating investigation is required.

6. Appendix A is revised to read as follows:

APPENDIX A.—FEES FOR NRC ACCESS AUTHORIZATION

Category	Fee
Initial "L" Access Authorization	[1] $52
Reinstatement of "L" Access Authorization	[1] 52
Extension or Transfer of "L" Access Authorization	[1] 52
Initial "Q" Access Authorization	3,000
Initial "Q" Access Authorization (expedited processing)	3,400
Reinstatement of "Q" Access Authorization	[2] 3,000
Reinstatement of "Q" Access Authorization (expedited processing)	[2] 3,400
Extension or Transfer of "Q"	[2] 3,000
Extension or Transfer of "Q" (expedited processing)	[2] 3,400

[1] If the NRC determines, based on its review of available data, that a full field of investigation is necessary, a fee of $3,000 will be assessed prior to the conduct of the investigation.

[2] Full fee will only be charged if investigation is required.

Dated at Rockville, MD this 24th day of August 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 92–21752 Filed 9–9–92; 8:45 am]

BILLING CODE 7590–01–M

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10 CFR Part 35

RIN 3150–AC65

Quality Management Program and Misadministrations; NRC Override of OMB Disapproval of NRC Information Collection Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission has voted to override the Office of Management and Budget (OMB) disapproval of the information collection requirements imposed in the final rule entitled "Quality Management Program and Misadministrations" (July 25, 1991; 56 FR 34104). As part of this final rule, the Commission is amending its regulations to reflect OMB's assignment of a new control number to these information collection requirements. The Commission reevaluated the need for this final rule and the information collection requirements it contains. The Commission continues to believe that its requirements for written quality management programs and misadministration reports, if complied with, have a reasonable likelihood of decreasing misadministrations (e.g., wrong dose or wrong patient) with a small incremental cost to licensees. Without the reporting and recordkeeping requirements, it would not be possible to implement and enforce these regulations effectively.

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION CONTACT: Anthony N. Tse, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3797.

SUPPLEMENTARY INFORMATION:

On July 25, 1991 (56 FR 34104), the Commission published in the **Federal Register** a final rule amending 10 CFR parts 2 and 35, entitled "Quality Management Program and Misadministrations." The final rule became effective on January 27, 1992. The final rule requires that applicable part 35 licensees implement Quality Management (QM) programs, continue to report misadministrations but at higher reporting thresholds, and keep certain records.

The Commission published two proposed rules related to this subject. The first proposed rule was published on October 2, 1987 (52 FR 36942). This proposed rule was prescriptive in that it contained specific basic quality assurance practices. In response to public comments and recommendations from the Advisory Committee on the Medical Uses of Isotopes (ACMUI), the Commission reexamined its approach and published the second proposed rule, containing performance-based requirements, on January 16, 1990 (55 FR 1439). Following publication of the January 1990 proposed rule a pilot program was conducted to provide a real-world test of the proposed rule in licensee hospitals and clinics and to gain insights beyond those generally obtained from the public comment process. Sixty-four volunteers (23 NRC

licensees and 41 Agreement State licensees) participated in the pilot program. The staff also conducted public workshops to discuss the results of the pilot program and to obtain recommendations on how to modify the proposed rule with professional organizations and Agreement States, and sought guidance from ACMUI.

During more than 20 public meetings, the impact of the recordkeeping and reporting requirements on medical use licensees received substantial attention from the NRC and the regulated community. As a result, the Commission believes that recordkeeping and reporting requirements contained in the final rule were reduced by more than half from those presented in the January 1990 proposed rule. These reductions included the removal of the recordkeeping and misadministration reporting requirements for nearly all diagnostic procedures. Considering the modifications to the proposed rule and the performance-oriented approach, the Commission concluded that the cost-effectiveness of the final rule had been optimized without significantly reducing the level of protection.

In December 1991, the NRC was notified by OMB that notwithstanding its earlier approval of the proposed rule, which received the appropriate OMB control number, it had concerns with the information collection requirements of the final rule. In order to resolve OMB's concerns, the NRC both corresponded and met with OMB. However, NRC and OMB staff interactions failed to resolve OMB concerns. In light of OMB approval of the information collection requirements contained in the proposed rule and because the final rule did not substantially change those requirements that were retained in the final rule from the proposed rule, the information collection requirements contained in the final rule became effective on January 27, 1992.

In February 1992, the American College of Nuclear Physicians and the Society of Nuclear Medicine petitioned the U.S. Court of Appeals for the District of Columbia Circuit for review of the final rule. On May 22, 1992, the Court found no basis to overturn the Quality Management and Misadministration Rule. Accordingly, the Court denied the petition for review. The Court found that the NRC had acted within its broad statutory mandate to establish "such standards * * * as the Commission may deem necessary or desirable to * * * protect health or to minimize danger to life." It also concluded that the substantive requirements of the QM rule were not arbitrary, capricious, or an abuse of discretion.

Subsequently, in a letter dated June 26, 1992, OMB stated that it disapproved the information collection request (ICR) associated with the July 1991 final rule. OMB concluded that "this information collection request is not necessary for the proper performance of the functions of the agency and that the information collection will not have practical utility for the agency." However, the Paperwork Reduction Act (PRA) provides that an independent regulatory agency such as NRC may override the OMB disapproval by a majority vote of its Commissioners (44 U.S.C. 3507).

The Commission fully supports the objectives of the PRA and strives to ensure that the private sector is requested to maintain or provide only such information as is needed to carry out regulatory responsibilities. For reasons specified below, pursuant to 44 U.S.C. 3507(c), the Commission has overridden the OMB determination. In a letter dated August 14, 1992, the Commission certified that it had overridden OMB's disapproval and requested that OMB promptly assign a new control number to the ICR associated with the Quality Management and Misadministration Rule for a period of 3 years.

In its implementing regulations OMB specifies (5 CFR 1320.11, 1320.4(b) and (c)) that in approving an ICR it evaluates whether (1) the agency has chosen the least burdensome means to obtain the information, (2) the information sought is available to the agency through some other means, and (3) the information sought has practical utility. Practical utility is defined (5 CFR 1320.7(o)) only as usefulness to the agency, taking into account the information's accuracy, adequacy, and reliability, and the agency's ability to process the information in a timely fashion.

OMB disapproval of the ICR does not indicate that the information collection requirements are an unnecessarily burdensome way to obtain information about misadministrations and medical quality management programs, or that the information is available through some other means. OMB disapproval relied on the third evaluation criterion described above and made a finding of no practical utility. But, contrary to 5 CFR 1320.7(o), OMB does not discount the accuracy, reliability, or adequacy of the information sought, or challenge the Commission's ability to process the information in a timely fashion. OMB disapproval indicates that OMB has concluded that there is no need for the Commission's final rule and regulatory program to reduce injuries from misadministration and that, therefore, any paperwork burden that the rule would impose is unreasonable.

The Commission—which is the agency charged with substantive responsibility for making such judgments—continues to believe that its requirements for written quality management programs and misadministration reports, if complied with, have a reasonable likelihood of decreasing misadministrations (e.g. wrong dose or wrong patient) with a small incremental cost to licensees. Without the reporting and recordkeeping requirements, it would not be possible to implement and enforce these regulations effectively.

On August 21, 1992, OMB assigned a new control number. Therefore, the effective period for these information collection requirements is from January 27, 1992 through August 31, 1995.

The Commission will continue to monitor implementation and inspection under the rule to ensure that it provides the Commission with necessary information without imposing undue burden on the private sector. If the Commission finds the rule, in whole or in part, to be overly burdensome or ineffective, it will consider modifying or deleting portions of the rule. Further, the NRC will hold a public workshop with the medical community and other interested parties, to ensure that there is mutual understanding as to the intent of the rule, especially its information collection requirements, and to discuss effective implementation. In particular, NRC will discuss the extent to which the industry's self-auditing guidelines can be used. Following the workshop, the Commission will develop additional guidance on compliance with the rule, written in clear language appropriate to the medical community.

Environmental Impact: Categorical Exclusion

The NRC has determined that this is the type of action described in categorical exclusion 10 CFR 51.22(c)(3)(ii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act

In a letter dated June 26, 1992, OMB stated that it disapproved the NRC's information collection request associated with the rule entitled "Quality Management Program and Misadministrations."

As required by the Paperwork Reduction Act, the Commission has

certified to OMB, in a letter dated August 14, 1992, that by unanimous vote the Commission had overridden the OMB's disapproval of the information collection request associated with this rule.

On August 21, 1992, OMB assigned the following new control number: 3150–0171, effective until August 31, 1995.

This new control number is only applicable to the sections in 10 CFR part 35 amended by this rule. Information collection authority for all other sections of 10 CFR part 35 remains under the existing general control number: 3150–0010.

List of Subjects in 10 CFR Part 35

Byproduct material, Criminal penalty, Drugs, Health facilities, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

Text of Final Regulations

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 35.

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

1. The authority citation for part 35 continues to read in part as follows:

Authority: Secs. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

2. In § 35.8, paragraph (b) is revised and paragraph (d) is added to read as follows:

§ 35.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 35.12, 35.13, 35.14, 35.21, 35.22, 35.23, 35.27, 35.29, 35.31, 35.50, 35.51, 35.53, 35.59, 35.60, 35.61, 35.70, 35.80, 35.92, 35.204, 35.205, 35.310, 35.315, 35.404, 35.406, 35.410, 35.415, 35.606, 35.610, 35.615, 35.630, 35.632, 35.634, 35.636, 35.641, 35.643, 35.645, and 35.647.

* * * * *

(d) OMB has assigned control number 3150–0171 for the information collection requirements contained in §§ 35.32 and 35.33.

Dated at Rockville, Maryland, this 3d day of September 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92–21754 Filed 9–9–92; 8:45 am]

BILLING CODE 7590–01–M

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10 CFR Part 50

RIN 3150–AE12

Minor Modifications to Nuclear Power Reactor Event Reporting Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) has amended its regulations to make minor modifications to the current nuclear power reactor event reporting requirements. The final rule applies to all nuclear power reactor licensees and deletes reporting requirements for some events that have been determined to be of little or no safety significance. The final rule reduces the industry's reporting burden and the NRC's response burden in event review and assessment.

EFFECTIVE DATE: October 13, 1992.

FOR FURTHER INFORMATION CONTACT: Raji Tripathi, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–4435.

SUPPLEMENTARY INFORMATION:

Background

The Commission is issuing a final rule that amends the nuclear power reactor event reporting requirements contained in 10 CFR 50.72, "Immediate Notification Requirements for Operating Nuclear Power Reactors," and 10 CFR 50.73, "Licensee Event Report System." The final rule is issued as part of the Commission's ongoing activities to improve its regulations. Specifically, this final rule amends 10 CFR 50.72 (b)(2)(ii) and 10 CFR 50.73 (a)(2)(iv). On June 26, 1992 (57 FR 28642), the Commission issued a proposed rule requesting public comments on these amendments.

Over the past several years, the NRC has increased its attention to event reporting issues to ensure uniformity, consistency, and completeness in reporting. In September 1991, the NRC's Office for Analysis and Evaluation of Operational Data (AEOD) issued for comment a draft NUREG–1022, Revision 1,[1] "Event Reporting Systems 10 CFR 50.72 and 10 CFR 50.73—Clarification of NRC Systems and Guidelines For Reporting." Following resolution of public comments, the NUREG will be issued in the final form. The NUREG will contain improved guidance for event reporting.

NRC's reviews of operating experience and the patterns of licensees' reporting of operating events since 1984 have indicated that reports on some of these events are not necessary for the NRC to perform its safety mission and that continued reporting of these events would not contribute useful information to the operating reactor events database. Additionally, these unnecessary reports would have continued to consume both the licensees' and the NRC's resources that could be better applied elsewhere. The NRC has determined that certain types of events, primarily those involving invalid engineered safety feature (ESF) actuations, are of little or no safety significance.

Valid ESF actuations are those actuations that result from "valid signals" or from intentional manual initiation, unless it is part of a preplanned test. Valid signals are those signals that are initiated in response to actual plant conditions or parameters satisfying the requirements for ESF initiation.

Invalid actuations are by definition those that do not meet the criteria for being valid. Thus, invalid actuations include actuations that are not the result of valid signals and are not intentional manual actuations. Invalid actuations include instances where instrument drift, spurious signals, human error, or other invalid signals caused actuation of the ESF (e.g., jarring a cabinet, an error in use of jumpers of lifted leads, an error in actuation of switches or controls, equipment failure, or radio frequency interference).

NRC's evaluation of both the reported events since January 1984, when the existing rules first became effective, and the comments received during the Event Reporting Workshops conducted in Fall of 1990 identified needed improvements in the rules. The NRC determined that invalid actuation, isolation, or realignment of a limited set of ESFs including the systems, subsystems, or components [i.e., an invalid actuation, isolation, or realignment of only the reactor water clean-up (RWCU) system,

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[1] Free single copy may be requested by writing to the Distribution and Mail Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy is also available for inspection or copying for a fee at the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC 20555.

the control room emergency ventilation (CREV) system, the reactor building ventilation system, the fuel building ventilation system, or the auxiliary building ventilation system, or their equivalent ventilation systems] are of little or no safety significance. However, these events are currently reportable under 10 CFR 50.72 (b)(2)(ii) and 10 CFR 50.73 (a)(2)(iv).

The final rules for the current event reporting regulations, 10 CFR 50.72 and 10 CFR 50.73 (48 FR 39039; August 29, 1983, and 48 FR 33850; July 26, 1983, respectively), stated that ESF systems, including the reactor protection system (RPS), are provided to mitigate the consequences of a significant event. Therefore, ESFs should (1) work properly when called upon and (2) should not be challenged frequently or unnecessarily. The Statements of Consideration for these final rules also stated that operation of an ESF as part of a pre-planned operational procedure or test need not be reported. The Commission noted that ESF actuations, including reactor trips, are frequently associated with significant plant transients and are indicative of events, that are of safety significance. At that time, the Commission also required all ESF actuations, including the RPS actuations, whether manual or automatic, valid or invalid—except as noted, to be reported to the NRC by telephone within 4 hours of occurrence followed by a written Licensee Event Report (LER) within 30 days of the incident. This requirement on timeliness of reporting remains unchanged.

The reported information is used by the NRC in confirmation of the licensing bases, identification of precursors to severe core damage, identification of plant specific deficiencies, generic lessons, review of management control systems, and licensee performance assessment.

Discussion

The NRC has determined that some events that involve only invalid ESF actuations are of little or no safety significance. However, not all invalid ESF actuations are being exempted from reporting through this rule. The relaxations in event reporting requirements contained in the final rule apply only to a narrow, limited set of specifically defined invalid ESF actuations. These events include invalid actuation, isolation, or realignment of a limited set of ESFs including systems, subsystems, or components (i.e., an invalid actuation, isolation, or realignment of only the RWCU system, or the CREV system, reactor building ventilation system, fuel building ventilation system, auxiliary building ventilation system, or their equivalent ventilation systems). The actuation of the standby gas treatment system following an invalid actuation of the reactor building ventilation system is also exempted from reporting. In addition, the final rule excludes invalid actuations of these ESFs (or their equivalent systems) from signals that originated from non-ESF circuitry.

However, invalid actuations of other ESFs would continue to be reportable. For example, emergency core cooling system isolations/actuations; containment isolation valve closures that affect cooling systems, main steam flow, essential support systems, etc.; containment spray actuation; and residual heat removal system isolations (or systems designated by any other names but designed to fulfill the function similar to these systems and their equivalents), are still reportable. If an invalid ESF actuation reveals a defect in the system so that the system failed or would fail to perform its intended function, the event continues to be reportable under other requirements of 10 CFR 50.72 and 10 CFR 50.73. If a condition or deficiency has (1) an adverse impact on safety-related equipment and consequently on the ability to shut down the reactor and maintain it in a safe shutdown condition, (2) has a potential for significant radiological release or potential exposure to plant personnel or the general public, or (3) would compromise control room habitability, the event/discovery continues to be reportable.

Invalid ESF actuations that are excluded by this final rule, but occur as a part of a reportable event, continue to be described as part of the reportable event. These amendments are not intended to preclude submittal of a complete, accurate, and thorough description of an event that is otherwise reportable under 10 CFR 50.72 or 10 CFR 50.73. The Commission relaxed only the selected event reporting requirements specified in this final rule.

Licensees are still required under 10 CFR part 50, appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," to address corrective actions for events or conditions that are adverse to quality whether the event is reportable or not. In addition, minimizing ESF actuations (such as RWCU isolations) to reduce operational radiation exposures associated with the investigation and recovery from the actuations, are consistent with ALARA requirements.

This rule excludes three categories of events from reporting:

(1) The first category excludes events in which an invalid ESF or RPS actuation occurs when the system is already properly removed from service if all requirements of plant procedures for removing equipment from service have been met. This includes required clearance documentation, equipment and control board tagging, and properly positioned valves and power supply breakers.

(2) The second category excludes events in which an invalid ESF or RPS actuation occurs after the safety function has already been completed (e.g., an invalid containment isolation signal while the containment isolation valves are already closed, or an invalid actuation of the RPS when all rods are full inserted).

(3) The third category excludes events in which an invalid ESF actuation occurs that involes only a limited set of ESFs [i.e., when an invalid actuation, isolation, or realignment of only the RWCU system, or any of the following ventilation systems: CREV system, reactor building ventilation system, fuel building ventilation system, auxiliary building ventilation system, or their equivalent ventilation systems, occurs]. Invalid actuations that involve other ESFs not specifically excluded, (e.g., emergency core cooling system isolations or actuations; containment isolation valve closures that affect cooling systems, main steam flow, essential support systems, etc.; containment spray actuation; residual heat removal system isolations, or their equivalent systems), continue to be reportable.

Licensees continue to be required to submit LERs if a deficiency or condition associated with any of the invalid ESF actuations of the RWCU or the CREV systems (or other equivalent ventilation systems) satisfies any reportability criteria under § 50.72 and § 50.73.

Impact of the Amendments on the Industry and Government Resources

Relaxing the requirement for reporting of certain types of ESF actuations reduces the industry's reporting burden and the NRC's response burden. This reduction is consistent with the objectives and the requirements of the Paperwork Reduction Act. These amendments have no impact on the NRC's ability to fulfill its mission to ensure public health and safety because the deleted reportability requirements have little or no safety significance.

It is estimated that the changes to the existing rules will result in about 150 (or

5–10 percent) fewer Licensee Event Reports each year. Similar reductions are expected in the number of prompt event notifications reportable under 10 CFR 50.72. Some respondents, in their comments on the proposed rule, dated June 26, 1992, submitted an estimate of approximately 15 percent reduction in their reporting burden.

Summary of Comments

The NRC received 19 comments—2 from individuals, 3 from industry-supported organizations, and 14 from utilities. Except for two respondents, all commenters welcomed the Commission's efforts to reduce the licensee burden and to save the agency's resources in event review and processing. The utilities and the industry-supported organizations expressed their desire for a broader relaxation to include all invalid ESF actuations from reporting.

Other comments from the respondents concerned the following: clarification of the definition of "invalid" actuations; examples of events being exempted from reporting; consideration of plant-specific situations; exemption from reporting of the actuation of the standby gas treatment system following an invalid actuation of the reactor building ventilation system; and possibly extending relaxation of invalid actuations/isolations of RWCU from reporting to include those of the chemical and volume control system in a pressurized water reactor. The Statement of Considerations for this final rule addresses most of these concerns. Other issues and clarifications concerning event reportability will be addressed in NUREG–1022, Revision 1. However, it is not practical to address a plant-specific situation unless it relates to a generic concern.

The Commission stresses that only certain specific invalid ESF actuations are being exempted from reporting through the present amendments. NUREG–1022, Revision 1 will contain specific examples and additional guidance on events which are presently reportable as well as those which are being exempted from reporting through these amendments. In the future, the Commission will give due consideration to other proposed relaxations from event reporting after the NRC staff has had an opportunity to reassess the data needs of the agency and performed safety assessments to justify initiating a separate general rulemaking. Until such time, all events not specifically exempted in these amendments continue to be reportable.

The two respondents who opposed the proposed amendments expressed their concerns about eliminating the selected event reporting requirements. These commenters believe that the elimination of these event reporting requirements may adversely affect the NRC's information database and ultimately affect the agency's ability to carry out its mission to protect public health and safety. For many years, the NRC staff has been systematically reviewing information obtained from Licensee Event Reports. These assessments of reactor operational experience have included data on the types of events included in the three categories that the NRC is deleting from reporting. The staff's reviews and assessments of nearly 1000 reactor-years of operational experience have identified essentially no safety significance associated with the type of events included in the aforementioned three categories. The Commission has reviewed the scope of these amendments, and on the basis of the staff's assessment of the past reactor operational experience, has subsequently concluded with a reasonable confidence that relaxation from reporting of events in the three categories does not affect the agency's ability to protect public health and safety.

Based on the input from the utilities, these amendments will reduce the industry's reporting burden by about 15 percent. The estimated savings of the NRC's response burden in event review and assessment is about 5–10 percent.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusions 10 CFR 51.22 (c)(3)(ii) and (iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These amendments were approved by the Office of Management and Budget approval numbers 3150–0011 and 3150–0104.

Because the rule will relax existing reporting requirements, public reporting burden of information is expected to be reduced. It is estimated that about 150 fewer Licensee Event Reports (NRC Form 366) and a similarly reduced number of prompt event notifications, made pursuant to 10 CFR 50.72, will be required each year. The resulting reduction in burden is estimated to average 50 hours per licensee response, including the time required reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and reviewing the collection of information. Send comments regarding the estimated burden reduction or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0011 and 3150–0104), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final rule. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20555. Single copies of the analysis may be obtained from: Raji Tripathi, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–4435.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605 (B)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The final rule affects only the event reporting requirements for operational nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration Act in 13 CFR part 121.

Backfit Analysis

As required by 10 CFR 50.109, the Commission has completed an assessment of the need for Backfit Analysis for this final rule. The proposed amendments include relaxations of certain existing requirements on reporting of information to the NRC. These changes neither impose additional reporting requirements nor require modifications to the facilities or their licenses.

Accordingly, the NRC has concluded that this final rule does not constitute a

backfit and, thus, a backfit analysis is not required.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalty, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1964, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the Commission is adopting the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273): § § 50.5, 50.46(a) and (b), and 50.54(c) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); § § 50.5, 50.7(a), 50.10(a)–(c), 50.34(a) and (e), 50.44(a)–(c), 50.46(a) and (b), 50.47(b), 50.48(a), (c), (d), and (e), 50.49(a), 50.54(a), (i), (j)(l), (l)–(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a(a), (c)–(e), (g), and (h), 50.59(c), 50.60(a), 50.62(b), 50.64(b), 50.65, and 50.80(a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and § § 50.9(d), (h), and (j), 50.54(w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71(a)–(c) and (e), 50.72(a), 50.73(a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.72, paragraph (b)(2)(ii) is revised to read as follows:

§ 50.72 Immediate notification requirements for operating nuclear power reactors.

* * * * *

(b) Non-emergency Events. * * *

(2) Four-hour reports. * * *

(ii) Any event or condition that results in a manual or automatic actuation of any engineered safety feature (ESF), including the reactor protection system (RPS), except when:

(A) The actuation results from and is part of a pre-planned sequence during testing or reactor operation;

(B) The actuation is invalid and:

(*1*) Occurs while the system is properly removed from service;

(*2*) Occurs after the safety function has been already completed; or

(*3*) Involves only the following specific ESFs or their equivalent systems:

(*i*) Reactor water clean-up system;

(*ii*) Control room emergency ventilation system;

(*iii*) Reactor building ventilation system;

(*iv*) Fuel building ventilation system; or

(*v*) Auxiliary building ventilation system.

* * * * *

3. In § 50.73, paragraph (a)(2)(iv) is revised to read as follows:

§ 50.73 Licensee event report system.

(a) Reportable events. * * *

(2) The licensee shall report: * * *

(iv) Any event or condition that resulted in a manual or automatic actuation of any engineered safety feature (ESF), including the reactor protection system (RPS), except when:

(A) The actuation resulted from and was part of a pre-planned sequence during testing or reactor operation;

(B) The actuation was invalid and:

(*1*) Occurred while the system was properly removed from service;

(*2*) Occurred after the safety function had been already completed; or

(*3*) Involved only the following specific ESFs or their equivalent systems:

(*i*) Reactor water clean-up system;

(*ii*) Control room emergency ventilation system;

(*iii*) Reactor building ventilation system;

(*iv*) Fuel building ventilation system; or

(*v*) Auxiliary building ventilation system.

* * * * *

Dated at Rockville, MD, this 27th day of August, 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 92–21750 Filed 9–9–92; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–0706]

RIN 7100–AB09

Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending its Regulation Y to augment the list of permissible nonbanking activities for bank holding companies to include the provision of full service securities brokerage under certain conditions; and the provision of financial advisory services under certain conditions. The Board has by order previously approved these activities. Applications by bank holding companies to engage in activities included on the Regulation Y list of permissible nonbanking activities may be processed by the Reserve Banks under expedited procedures pursuant to delegated authority.

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452–3583), or Thomas M. Corsi, Senior Attorney (202/452–3275), Legal Division. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

The Bank Holding Company Act of 1956, as amended (the "BHC Act"), generally prohibits a bank holding company from engaging in nonbanking activities or acquiring voting securities of any company that is not a bank. Section 4(c)(8) of the BHC Act provides an exception to this prohibition where the Board determines after notice and opportunity for hearing that the activities being conducted are "so closely related to banking or managing or controlling banks as to be a proper incident thereto." 12 U.S.C. 1843(c)(8). The Board is authorized to make this determination by order in an individual case or by regulation.

The Board's Regulation Y (12 CFR part 225) sets forth a list of nonbanking

activities that the Board has determined to be closely related to banking under section 4(c)(8) of the BHC Act and, therefore, generally permissible for bank holding companies. 12 CFR 225.25. Applications by bank holding companies to engage in activities listed in Regulation Y as permissible nonbanking activities may be processed by the Reserve Banks under expedited procedures pursuant to delegated authority.

The Board has previously determined, by order, that full service securities brokerage activities, *i.e.*, the provision of securities brokerage services and investment advisory services together by the same company to its customers, is closely related to banking and a proper incident thereto for purposes of section 4(c)(8) of the Bank Holding Company Act. The Board has also previously determined, by order, that the provision of the following financial advisory services is an activity that is closely related to banking and a proper incident thereto: (1) Providing financial advice to foreign governments and their municipalities and agencies, such as with respect to the issuance of their securities; (2) providing financial and transaction advice to institutional customers with respect to structuring, financing and negotiating mergers, acquisitions, divestitures, joint ventures, leveraged buyouts, recapitalizations, capital structurings, structuring and arranging loan syndications, financing and other corporate transactions (including private and public financings), rendering fairness opinions, providing valuation services, and conducting feasibility studies; and, (3) providing financial and transaction advice to institutional customers regarding the structuring and arranging of swaps, caps, and similar transactions relating to interest rates, currency exchange rates or prices, and economic and financial indices.

The Board has invited public comment on a proposal to amend its Regulation Y to add these activities to the Board's regulatory list of permissible nonbanking activities. 55 FR 36282, September 5, 1990.

In connection with this action, the Board proposed to modify certain restrictions previously imposed by order on bank holding companies engaged in full service securities brokerage activities. The Board also requested public comment on the appropriateness of modifying limitations imposed by order on financial advisory activities, and proposed to amend Regulation Y to include a definition of institutional customer applicable to full service securities brokerage services.

Description of the Final Rule

The Board has determined to add full service securities brokerage and financial advisory services to the regulatory list of permissible nonbanking activities. The final rule as adopted generally simplifies the conditions previously imposed by the Board on the conduct of full service securities brokerage activities and on financial advisory activities. Pursuant to the final rule, bank holding companies seeking to conduct these activities or acquire companies engaged in these activities will be able to take advantage of a number of streamlined procedures relating to listed nonbanking activities. These procedures substitute a notice period in lieu of an application procedure for companies seeking to engage *de novo* in these activities, and permit Reserve Banks to review proposals to conduct these activities under expedited procedures.

Full Service Securities Brokerage

The Board's regulations currently permit bank holding companies to provide securities brokerage and investment advisory services separately.[1] In addition, the Board has previously determined by order that bank holding companies may provide these services on a combined basis to institutional and retail customers.[2]

In its orders permitting bank holding companies to engage in full service securities brokerage activities, the Board established a framework for the conduct of the activity that was designed to address potential adverse effects, including conflicts of interests, that may result from the combination of investment advisory and securities brokerage activities.[3] This framework included requirements that:

- A majority of the brokerage company's board of directors not be officers or directors of any affiliated bank.
- The brokerage company hold itself out as a separate and distinct corporation with its own properties, assets and liabilities, capital, books and records and maintain separate operations from affiliated banks. The Board has permitted brokerage companies to share certain back-office employees with affiliated banks, where the employees do not have contact with the public or participate in the sales activities of the brokerage company.
- All of the brokerage company's notices, advice, confirmations, correspondence and other documentation clearly indicate the company's separate identity.
- The brokerage company specify in all customer agreements that it is solely responsible for its contractual obligations and commitments.
- Any back office services provided to the brokerage company by bank affiliates and research or investment advice purchased from affiliates be compensated for in accordance with section 23B of the Federal Reserve Act.
- The brokerage company provide discretionary investment management services only to institutional customers (as defined).
- The brokerage company provide notice to its customers that an affiliated bank may be a lender to an issuer of securities.
- The brokerage company not receive referrals from affiliates and not exchange customer lists or confidential information regarding customers with affiliates, except with the customers' consent.
- As required by section 23B of the Federal Reserve Act, no bank affiliated with the brokerage company engage in advertising for the brokerage company stating or suggesting that an affiliated bank is responsible for the brokerage company's obligations, or enter into any agreement so stating or suggesting.
- The brokerage company's offices either be separate from those of other affiliates or, in the case of offices established in a building in which another affiliate also has offices, in areas separate from areas utilized by such affiliate.
- The brokerage company not transmit advisory research or recommendations to the commercial lending department of any bank affiliate. The brokerage company may make available to affiliated banks the investment recommendations and research that it makes available to unaffiliated investor clients or that are non-confidential. The brokerage company may not be provided with position reports regarding the securities affiliates may hold in inventory.[4]
- If the brokerage company obtains customer lists from affiliates, it use such lists for general advertising purposes only (such as mass mailings) and not to solicit individual customers of its affiliates.
- The brokerage company charge fees only for transactions executed for the customer (and not separately for advice).[5]

[1] See 12 CFR 225.25(b)(4) (investment advice); and 225.25(b)(15) (securities brokerage). Bank holding companies may still seek approval to engage separately in these activities, or to engage only in one of the activities.

[2] See, *e.g.*, National Westminster Bank PLC, 72 Federal Reserve Bulletin 584 (1986), *affirmed Securities Industry Ass'n* v. *Board of Governors*, 821 F.2d 810 (D.C. Cir. 1987), cert. denied, 484 U.S. 1005 (1988). See also PNC Financial Corp., 75 Federal Reserve Bulletin 396 (1989); Bank of New England Corporation, 74 Federal Reserve Bulletin 700 (1988) (combined services offered to institutional and retail customers); Manufacturers Hanover Corp., 73 Federal Reserve Bulletin 930 (1987).

[3] Id.

[4] The company may, at the time a research report is being released, disclose to customers its affiliates' positions in securities that are the subject of the research report.

[5] See, *e.g.*, Bank of New England Corporation, 74 Federal Reserve Bulletin 700 (1988).

In addition to these requirements imposed by the Board, the full service securities brokerage subsidiaries of bank holding companies are subject to the requirements applicable to broker-dealers under the Securities Exchange Act of 1934, as well as to applicable provisions of the Investment Advisers Act of 1940, applicable state securities laws, the general anti-fraud provisions of the securities laws, and a duty to deal fairly with customers.[6]

The Board proposed eliminating most of the restrictions noted above as part of this proposal. After careful review of the comments and the Board's experience in supervising the full service brokerage activities of bank holding companies, the Board has determined to eliminate duplication between the restrictions imposed by the Board on the conduct of this activity and the restrictions imposed under the securities laws or other applicable laws. In addition, the Board has determined to remove the other restrictions noted above, with three exceptions. First, the rule retains the limitation under current Board orders that a full service securities brokerage subsidiary may provide discretionary investment management services only to institutional customers.[7] Second, the rule retains in large part the Board's current disclosure requirements.[8] Third, the rule retains the restriction that prevents a brokerage company from exchanging confidential customer information with any affiliate without the customer's consent.

The final rule does not include the other restrictions listed above that were previously imposed by order on a bank holding company's conduct of full service securities brokerage. Bank holding companies and their subsidiaries engaged in full service brokerage activities will, of course, continue to be subject to all of the requirements imposed by federal and state securities laws, as well as to the other restrictions imposed by applicable statutes, including the prohibitions on tying products and services with bank products and services, and restrictions on transactions with affiliated banks imposed by other statutes. In addition, while the Board has determined not to retain all of the above noted restrictions in its final regulation, the Board believes that bank holding companies should, as a matter of sound practice and in order to obtain the benefits of the legal doctrine of corporate separateness, continue to operate full service brokerage subsidiaries as a distinct and separate corporation with separate books and records, capital, assets, liabilities, and management.

The Board believes that the restrictions it has retained in its regulation together with federal securities laws and regulations and federal banking statutes, particularly the affiliate transactions restrictions of sections 23A and 23B of the Federal Reserve Act, are adequate to address the potential conflicts of interests and other adverse effects that may be associated with the conduct of full service securities brokerage activities by a subsidiary of a bank holding company. In addition, the Board believes that under these conditions, this revision will benefit the public by providing increased customer convenience and increased efficiencies for bank holding companies that provide full service brokerage services.

[6] See, *e.g.*, 17 CFR 240.15c1-2 (anti-fraud rule).

[7] The Board has previously defined an "institutional customer." See The Chase Manhattan Corporation, 74 Federal Reserve Bulletin 704 (1988). The final rule amends Regulation Y to incorporate this definition. The final rule also retains the requirements that a brokerage company offering discretionary management services comply with applicable law, including fiduciary principles, and that it obtain the consent of its customer before engaging in discretionary securities transactions with itself or an affiliate. See J.P. Morgan & Co., Incorporated, 73 Federal Reserve Bulletin 810 (1987).

[8] The final rule requires specifically that the brokerage company disclose to all of its customers that the brokerage company is solely responsible for its contractual obligations and commitments; that the brokerage company is not a bank or insured institution, and is separate from any affiliated bank or insured institution; and that the securities sold, offered, or recommended by the brokerage company are not insured by the FDIC, and are not obligations of, or endorsed or guaranteed by, any bank, unless such is the case. The final rule requires that these disclosures be made before the brokerage company provides any brokerage or advisory services to its customers and, in the case of the statement that the brokerage company is solely responsible for its contractual obligations and commitments, again in each statement of accounts to customers. The initial disclosure may be oral provided that a written disclosure is provided immediately thereafter.

Public Comments Regarding Full Service Securities Brokerage Activities

The Board received over 70 public comments in response to its request for comments on the proposal to add full service securities brokerage to the Regulation Y list of permissible nonbanking activities. No commenter opposed the addition of this activity to the Regulation Y list. The commenters included forty-five individuals; fifteen bank holding companies, including large national and regional companies; six small banks; several brokerage subsidiaries of bank holding companies; five trade associations; a law firm; and several Federal Reserve Banks. Although every commenter favored the addition of full service securities brokerage to the Regulation Y list of permissible nonbanking activities, various commenters addressed specific features of the proposal, especially the topics of discretionary investment management for retail customers and the disclosure requirements.

1. Need for Restrictions Generally

A number of commenters argued that many of the restrictions imposed by the Board on full service brokerage activities are not necessary. First, commenters argue that the Board need not duplicate restrictions contained in the securities laws because the securities brokerage subsidiaries of bank holding companies remain subject to state and federal securities laws and regulations. A number of the restrictions imposed by the Board are similar to the existing requirements of federal and state securities laws, or incorporate requirements contained in other statutory provisions (such as section 23B of the Federal Reserve Act). The commenters also note that the experience of the OCC has not indicated that the simpler framework used by the OCC that relies primarily on the securities laws adds significant risk to the conduct of the activity.[9]

2. Discretionary Investment Management

Thirteen commenters, including large national and regional bank holding companies and trade associations, suggested that the Board broaden the scope of authorized full service securities brokerage to permit discretionary investment management for retail customers. The commenters offered several reasons for permitting bank holding companies to offer discretionary investment management to retail customers through full service securities brokerage affiliates. In particular, the commenters argued that:

1. Brokerage companies affiliated with bank holding companies would be registered as broker-dealers with the Securities and Exchange Commission and the National Association of Securities Dealers, and customers would be protected by existing securities and common law requirements and duties.

2. Customers are generally free to limit a broker's exercise of discretion.

3. Retail customers have sufficient resources and incentive to monitor closely their account activities in order to identify possible abuses.

[9] *See, e.g.*, O.C.C. Interpretive Letter 403, *reprinted in* (1988-89 Transfer Binder) Fed. Banking L. Rep. (CCH) ¶ 85,627 (December 9, 1987). The OCC also has limited national banks to providing discretionary investment management only through the trust department of the bank.

4. Prohibiting such a service would disadvantage the brokerage companies that are affiliates of bank holding companies relative to those that are not affiliates of bank holding companies.

In determining in 1987 to limit discretionary account activities to institutional customers, the Board reasoned that institutional customers are generally financially sophisticated, less likely in general than retail customers to place undue reliance on investment advice, and better able to monitor the activities of, and potential conflicts of interests arising from, a brokerage company that provides discretionary investment management services.[10] The Board noted in particular that institutional customers would be better able than retail customers to detect account churning or unsuitable investments made on behalf of the customer by a brokerage firm.

Four commenters stated that the existing restriction on discretionary account activities should be retained. Two large regional bank holding companies supported retention of the existing limitation on the ground that the trust departments of banks are better suited than brokerage companies to providing discretionary investment management to retail customers.

The OCC also has recognized the possibility of abuses in connection with discretionary investment management services. Accordingly, the OCC has not to date permitted national banks to offer such services to retail brokerage customers other than through a trust department or trust company operations subsidiary. These entities operate under a number of restrictions to which the nonbank subsidiaries of bank holding companies are not subject, including the OCC's comprehensive rules governing trust activities.[11]

The final rule retains the prohibition on providing discretionary investment management services to retail customers. The Board believes this limitation is appropriate in light of the potential for abuse and conflicts of interest in connection with providing discretionary investment management services. However, because institutional customers are likely to be financially sophisticated and able to detect potential abuses and conflicts of interest, the Board continues to believe that these potential adverse effects are substantially mitigated in the case of the provision of discretionary investment management service to institutional customers. In addition, a prohibition on the provision of discretionary investment management services to retail customers through a full service securities brokerage company subsidiary would not preclude bank holding companies from offering the service through other appropriate means. Bank holding companies may provide such services to retail customers through a trust company subsidiary or the trust department of a bank, where specific fiduciary responsibilities govern the bank or trust company's actions.

3. Definition of Institutional Customer

Two commenters specifically addressed the Board's proposed definition of "institutional customer." As proposed, the definition of "institutional customer" included individuals whose net worth (or joint net worth with spouse) exceeds $1 million. The proposed definition also included broker-dealers and option traders registered under the Securities Exchange Act of 1934, as well as other securities professionals.

One commenter proposed adding to this list investment or banking professionals. The Board has previously determined that including investment and banking professionals within the definition of institutional customer is consistent with the purpose of the definition, which is to limit the provision of certain services to financially sophisticated customers, and would not materially increase the likelihood of significant adverse effects. Bankers Trust New York Company, 74 Federal Reserve Bulletin 695 (1988). Accordingly, the Board has adopted this suggestion in the final rule.

Another commenter suggested including all "accredited investors" as defined in Regulation D of the Securities and Exchange Commission within the definition of institutional customer.[12] The SEC's definition of accredited investor differs in a number of respects from the Board's definition of institutional customer. For example, to qualify as an accredited investor a corporation must meet a higher $5 million asset test than the $1 million asset test adopted in the board's definition of institutional customer; on the other hand, a natural person with income in excess of $200,000 in each of the two most recent years may qualify as an accredited investor, while the Board's definition of institutional customer includes only individuals with a net worth in excess of $1 million.

The definition of the term accredited investor was developed in the context of other safeguards and limitations imposed by the federal securities laws on the sale of unregistered securities. These include specific written disclosure requirements that must be made prior to each transaction. The definition of institutional customer on the other hand, is used in the context of the provision of discretionary management investment services, which, by definition, do not require detailed prior disclosures in connection with each investment. Because of these differences, the Board does not believe that it is appropriate to modify the definition of institutional customer to conform with the SEC's definition of accredited investor.

4. Disclosure Requirements

Seven commenters supported the disclosure requirements as proposed. Six commenters suggested a variety of changes intended to reduce the frequency and increase the efficiency of any required disclosure.

The proposal would have required that the brokerage company disclose in writing to all of its customers that the brokerage company is solely responsible for its contractual obligations and commitments. The proposed rule required that the disclosure be made before the brokerage company provides any brokerage or advisory services to its customers and again in its statements of accounts to customers. The rule as proposed also required that the bank holding company make a one-time written disclosure at the start of the customer relationship that the brokerage company is not a bank or insured institution, and is separate from any affiliated bank or insured institution; and that the securities sold, offered, or recommended by the brokerage company are not insured by the FDIC, and are not guaranteed by, or an obligation of, any bank, unless such is the case.

In a comment representative of those suggesting changes to the proposed disclosure requirements, a bank holding company argued that the regulation should allow each holding company to exercise discretion, within the limits established by the securities laws, to decide the timing and manner for providing the required disclosures. The commenter noted that the securities laws, for example, generally do not require pre-relationship disclosure. In certain instances when the securities laws do require pre-relationship disclosure, the rules permit oral disclosure, provided a written disclosure

[10] J.P. Morgan & Co., Incorporated, 73 Federal Reserve Bulletin 810 (1987).

[11] 12 CFR part 9.

[12] 17 CFR 230.215.

is made prior to the completion of the relevant contract.[13] Similarly, another commenter suggested that the brokerage company be granted discretion to deliver any required periodic written disclosure in the manner it finds most efficient, whether by order confirmations, customer statements or separate customer mailings. Another bank holding company proposed requiring written disclosures only in the brokerage company's initial written communication with a customer (for example, in a statement of account terms).

With respect to the substance of any required disclosure, one bank holding company suggested alternatives for certain aspects of the proposed disclosure language. This commenter stated that it is unnecessary to require the brokerage company to disclose that it is solely responsible for its obligations because the brokerage company is already required to state that it is separate from affiliated depository institutions.

The final rule continues to require that a full service securities brokerage subsidiary of a bank holding company provide the mandated disclosure to each customer before providing any brokerage or advisory service. The proposal has been amended, however, to permit the brokerage company to make the initial disclosure orally, provided that written disclosure is given to the customer promptly thereafter and that the disclosure complies with any securities law requirements. The final rule otherwise provides bank holding companies with discretion to include the mandated disclosures in the customer agreement required under NASD rules or in any other vehicle, including in a separate written statement provided to the customer.[14]

The final rule retains the content of the current disclosure requirements without modification. The Board believes at this time that these disclosures are appropriate for a brokerage company that is affiliated with a bank in order to ensure that customers understand that the brokerage company is separate from the bank and that securities sold, offered, or recommended are not FDIC-insured and are not obligations of a bank (unless such is the case). The Board continues to believe that these disclosures decrease the likelihood that customers will associate the advice received from full service brokerage subsidiaries of bank holding companies, or the financial strength of these brokerage subsidiaries, with their affiliated banks. The OCC requires national banks that provide full service brokerage services to make similar disclosures.

5. Restriction on Certain Interlocks With Bank Affiliates

Fourteen commenters, including bank trade associations and large national and regional bank holding companies, supported fully the proposed elimination of the restriction on director, officer, and employee interlocks between a brokerage company and affiliated banks. Two bank holding companies noted that the elimination of the interlock restriction would permit regional bank holding companies to offer full service securities brokerage without costly duplication of existing management structures.

The Board believes that existing requirements of federal and state securities laws are sufficient to address potential adverse effects that may be associated with officer and director interlocks between a bank and its securities brokerage affiliate. Moreover, the Board notes that the OCC and many states permit national and state banks to provide full service brokerage services directly within the bank. The experience of the OCC in permitting national banks directly to provide full service brokerage services to their customers has not indicated a need for the requirement imposed by the Board that limits officer, director and employee interlocks between a brokerage company and its affiliated bank. In this regard, the Board notes that any subsidiary of a bank holding company that provides full service brokerage services is subject to prohibitions on tying these services to services offered by an affiliated bank. 12 U.S.C. 1972; 12 CFR 225.4(d). Moreover, a full service brokerage affiliate is required to make the disclosures discussed above when providing full service brokerage services to a customer.

Thus, the final rule eliminates the restriction on interlocks between a bank and an affiliated full service securities brokerage company. This action does not remove the restriction currently imposed by the Board on interlocks between a bank and an affiliate that conducts securities underwriting and dealing activities permitted under section 20 of the Glass-Steagall Act, or any limitations imposed by section 32 of the Glass-Steagall Act and Board Regulation R.

6. Restrictions on Brokering or Recommending Certain Securities

One bank holding company requested that the Board modify certain restrictions on a brokerage firm's ability to recommend or broker securities underwritten by an affiliate or distributed by an investment company advised by an affiliate. These restrictions arise from the section 20 firewalls applicable to affiliates that underwrite and deal in securities, and from the Board's interpretive rule governing investment advisory activities (12 CFR 225.125).

The Board has recently revised the interpretive rule to permit bank holding companies or their subsidiaries to provide advice with respect to, and broker securities issued by, investment companies advised by the holding company or its nonbanking affiliates.[15] As noted above, the Board did not, in connection with these modifications, propose any revisions to either the section 20 firewalls applicable to companies with subsidiaries that underwrite or deal in bank-ineligible securities or the Board's interpretive rule governing investment advisory activities.

7. Cross-Marketing

Another bank holding company proposed that the Board permit cross-marketing activity between full service brokerage companies and bank affiliates, including allowing bank affiliates to act as agent for, or engage in marketing on behalf of, affiliated brokerage companies. Current restrictions regarding such cross-marketing activity derive from the section 20 firewalls and apply only to bank holding companies with subsidiaries that underwrite and deal in bank-ineligible securities. As noted, the rule does not modify this restriction or any of the other section 20 firewalls. The Board has proposed modifying the cross-marketing restrictions in other rulemaking and will consider this comment in that context.

Relief From Prior Restrictions

Bank holding companies that have received Board approval by order to conduct full service securities brokerage activities subject to the restrictions discussed above are relieved of their commitments to the Board to conduct

[13] See, *e.g.*, 17 CFR 240.15c1-5; National Association of Securities Dealers, Rules of Fair Practice, Art. III, sec. 13.

[14] Later disclosures that are required to be included in the company's statements of accounts to its customers are more limited. These disclosures include statements that the brokerage company is a separate and distinct corporation, and reinforce that the bank affiliate is not responsible for, and does not provide any financial guarantee regarding, the investments recommended by the brokerage affiliate.

[15] 57 FR 30387, July 9, 1992.

full service brokerage activities within the restrictions discussed above, except as noted, and may conduct full service brokerage activities subject to the limitations retained in this final rule and to other applicable laws.

The Board's action in this rule does not affect the framework governing bank holding company subsidiaries that underwrite or deal in bank-ineligible securities consistent with section 20 of the Glass-Steagall Act. A holding company affiliate engaged in such bank-ineligible securities underwriting or dealing continues to be bound by the restrictions imposed on those activities by the Board.[16] In addition, a bank holding company that operates a section 20 affiliate and conducts full service brokerage activities, either within the section 20 affiliate or in a separate subsidiary, is not relieved of commitments or conditions governing brokering or recommending securities underwritten by the section 20 company.[17]

The final rule does not expand the scope of full service securities brokerage activities beyond the scope previously approved by the Board by order. In addition, the final rule does not modify the Board's interpretive rule regarding the investment advisory activities of bank holding companies. See 12 CFR 225.125 as amended at 57 FR 30387, July 9, 1992.

Financial Advisory Services

The Board has previously determined by order that the provision of several types of financial advisory services is closely related to banking for purposes of section 4(c)(8) of the BHC Act. Specifically, the Board has by order permitted bank holding companies to provide:

- Advice to financial and nonfinancial institutions and high net-worth individuals with respect to mergers, acquisitions, divestitures, joint ventures, reorganizations, recapitalizations, financing transactions, and the structuring of leveraged buyouts and capital raising vehicles, including providing valuations and fairness opinions in connection with mergers, acquisitions, and similar transactions; and
- Advice regarding the structuring of and arranging for loan syndications, interest rate swaps, interest rate caps, and similar transactions.

The Board has also permitted bank holding companies to conduct feasibility studies for corporations.[18] In making these determinations, the Board has relied on several limitations designed to mitigate the effects of possible conflicts of interests that could arise from the activity, and to ensure that bank holding companies and their nonbanking subsidiaries do not exert undue control over the operations of the client institution through the provision of financial advisory services.[19]

Comments Regarding Financial Advisory Activities

No commenter opposed the addition of the proposed financial advisory activities to the Regulation Y list of permissible nonbanking activities. Various commenters suggested modifications to, or clarifications of, certain specific features of the proposal, including removal of the limitations on this activity. No commenter suggested that restrictions more rigorous than those proposed would be appropriate.

The final rule adds the provision of the financial advisory services listed above to the regulatory list of activities permissible for bank holding companies, thereby simplifying the process under which bank holding companies obtain approval to conduct these activities. While the Board previously has permitted bank holding companies to provide feasibility studies only for corporations, the final rule permits bank holding companies to conduct feasibility studies for high net worth individuals, as well as corporations, and financial and nonfinancial institutions.

The rule retains two limitations on the conduct of financial advisory activities. First, the rule prohibits bank holding companies that provide financial advisory activities from performing routine tasks or operations for a financial advisory customer on a daily or continuous basis. The Board believes it is appropriate to retain this limitation at this time in order to assure that bank holding companies do not exercise daily control over companies under the guise of providing financial advisory services.[20] Second, the rule prohibits a financial advisor from making available to any of its affiliates confidential information regarding a customer or other party obtained in the course of providing any of the financial advisory services, except with the consent of the customer or party.

The Board's experience in supervising bank holding companies that conduct financial advisory services has not indicated that the other restrictions imposed by the Board by order are necessary to prevent adverse effects in the conduct of this activity. Of course, holding company affiliates that provide financial advisory services are bound by the restrictions against tying of products and services contained in section 106 of the Bank Holding Company Act

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[16] For example, the Board's action does not relieve a bank holding company subsidiary that engages in underwriting and dealing activities consistent with section 20 of the Glass-Steagall Act as well as full service brokerage activities from the restrictions imposed on having interlocking officers, directors or employees with an affiliated bank.

[17] For example, in conducting securities brokerage activities, the company conducting securities brokerage activities must disclose to any customer that it advises any interest of the company or affiliate as underwriter or market maker in the securities being purchased or recommended. In addition, this rule does not relieve any insured depository institution of the restriction imposed by Board order on expressing an opinion on the value or advisability of the purchase or sale of ineligible securities underwritten or dealt in by an affiliate without appropriate disclosure. J.P. Morgan & Co. Incorporated, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Security Pacific Corporation, 75 Federal Reserve Bulletin 192, 215 (1989).

[18] See, *e.g.*, SunTrust Banks, Inc., 74 Federal Reserve Bulletin 256 (1988) (provision of financial advisory services to nonaffiliated institutions in connection with mergers, acquisitions, divestitures, and the structuring of and arranging for loan syndications, interest rate swaps, caps, and similar transactions, and conducting feasibility studies for corporations); Skandinavian Bank Group plc, 75 Federal Reserve bulletin 311 (1989) (provision of financial advisory services concerning joint ventures and the structuring of leveraged buyouts and capital raising vehicles); First Regional Bancorp, Inc., 76 Federal Reserve Bulletin 859 (1990) (provision of financial advisory services in connection with reorganizations and recapitalizations); Banc One Corporation, 76 Federal Reserve Bulletin 756 (1990) (provision of financial advisory services to high net worth individuals).

[19] The limitations are the following:

1. The advisor's financial advisory activities will not encompass the performance of routine tasks or operations for a client on a daily basis;

2. Disclosure will be made to each potential client of the advisor that the advisor is an affiliate of its parent bank holding company and affiliated banks.

3. Advice rendered by the advisor on an explicit fee basis will be rendered without regard to correspondent balances maintained at the advisor's depository institution affiliates;

4. The advisor will not make available to its parent bank holding company or to any of its affiliates confidential information received by a client, except with the client's consent.

[20] Two commenters addressed specifically the proposed prohibition on providing financial advice on a daily or continuous basis. One bank holding company opposed the limitation, on the ground that certain of the financial advisory services lend themselves to recurring or regular provision, especially those involving long-standing clients with ongoing advisory requirements. The commenter argued that the limitation would unnecessarily restrict the ability of a bank holding company to advise its clients. By contrast, another bank holding company supported the proposed limitation, noting, as has the Board in its orders approving the provision of these services, that daily or continuous advice could involve the bank holding company in the direct management of its client, thereby resulting in a possible control relationship. The Board has previously determined that the performance of management consulting services other than for depository institutions pursuant to Regulation Y (12 CFR 225.25(b)(11)) is not so closely related to banking or managing or controlling banks as to be a proper incident thereto. 12 CFR 225.126(f); First Commerce Corporation, 58 Federal Reserve Bulletin 674 (1972).

Amendments of 1970. Accordingly, the final rule does not retain these restrictions and bank holding companies that conduct financial advisory services subject to these restrictions are granted relief from these two requirements.

The final rule reflects several revisions to the published proposal in response to suggestions made by commenters. In particular, at the request of commenters, the rule has been clarified to indicate that the provision of financial advice with respect to joint ventures, the structuring of leveraged buyouts and capital raising vehicles, restructurings, reorganizations, interest rate collars, and interest rate floors is permissible. The proposal has also been expanded at the request of several commenters to add references to providing financial advice regarding swaps, caps and similar transactions relating to currency exchange rates or prices, and economic and financial indices. Finally, the rule has been amended in response to comments to add the activity of providing financial advice to foreign governments, including foreign municipalities and agencies of foreign governments. The Board has previously determined by order that each of these activities is closely related to banking for purposes of section 4(c)(8) of the BHC Act in connection with proposals to conduct other financial advisory activities.[21]

Final Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 95–354, 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that adoption of this final rule will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation.

This amendment will add to the list of permissible bank holding company activities in the Board's Regulation Y activities that have been previously approved for bank holding companies by order. The addition will have the effect of reducing the burden on bank holding companies, including small bank holding companies, that wish to conduct these activities by simplifying the regulatory review process. The amendment does not impose more burdensome requirements on bank holding companies than are currently applicable.

Effective Date

The provisions of 5 U.S.C. 553(d) generally prescribing 30 days prior notice of the effective date of a rule have not been followed in connection with the adoption of this amendment because adoption of the rule reduces a regulatory burden. Section 553(d)(1) grants a specific exemption from the deferred effective date requirements in these instances.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Board is amending 12 CFR part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1843(c)(8), 1844(b), 3106, 3108, 3907, 3909, 3310, and 3331–3351.

In part 225, the footnotes are redesignated as shown below:

Section and paragraph	Current footnote number	New footnote number
§§ 225.25(b)(5)(i)(C)	3	4
(b)(5)(i)(D)	4	5
	5	6
(b)(5)(i)(F)	6	7
(b)(5)(ii)(D)	7	8
(b)(8)(i)(B)	8	9
(b)(8)(ii) (introductory text)	9	10
(b)(8)(ii)(B)	10	11
(b)(8)(iv) (introductory text)	11	12
	12	13
(b)(10)(ii)	13	14
(b)(11) (introductory text)	14	15
(b)(11)(iv)	15	16

3. In § 225.2, paragraphs (g) through (o) are redesignated as paragraphs (h) through (p) and a new paragraph (g) is added to read as follows:

§ 225.2 Definitions

* * * * *

(g) *Institutional customer* means:

(1) A bank (acting in an individual or fiduciary capacity); a savings and loan association; an insurance company; an investment company registered under the Investment Company Act of 1940; or a corporation, partnership, proprietorship, organization, or institutional entity, with net worth exceeding $1,000,000;

(2) An employee benefit plan with assets exceeding $1,000,000, or whose investment decisions are made by a bank, insurance company, or investment advisor registered under the Investment Advisors Act of 1940;

(3) A natural person whose individual net worth (or joint net worth with a spouse) at the time of receipt of the brokerage, advisory, or other relevant service exceeds $1,000,000;

(4) A broker-dealer or option trader registered under the Securities Exchange Act of 1934, or other securities, investment or banking professional; or

(5) An entity all of the equity owners of which are institutional customers.

* * * * *

4. In § 225.25, the word "and" is removed at the end of paragraph (b)(4)(iv), paragraph (b)(4)(v) is revised, a new paragraph (b)(4)(vi) is added, and paragraph (b)(15) is revised to read as follows:

§ 225.25 List of permissible nonbanking activities.

* * * * *

(b) * * *

(4) * * *

(v) Providing financial advice to state and local governments and foreign governments (including foreign municipalities and agencies of foreign governments), such as with respect to the issuance of their securities; and

(vi) (A)(*1*) Providing advice, including rendering fairness opinions and providing valuation services, in connection with mergers, acquisitions, divestitures, joint ventures, leveraged buyouts, recapitalizations, capital structurings, and financing transactions (including private and public financings and loan syndications); and conducting financial feasibility studies; [3] and,

(*2*) Providing financial and transaction advice regarding the structuring and arranging of swaps, caps, and similar transactions relating to interest rates, currency exchange rates or prices, and economic and financial indices, and similar transactions.

(B) The financial advisory services described in this subparagraph may be provided only to corporations, to financial and nonfinancial institutions, and to natural persons whose individual net worth (or joint net worth with a

[21] See, *e.g.*, The Dai-Ichi Kangyo Bank, Ltd., 77 Federal Reserve Bulletin 184 (1991) (advice regarding joint ventures, leveraged buyouts, restructurings, recapitalizations, and other corporate transactions, and advice regarding the structuring and arranging of swaps, caps and similar transactions relating to interest rates, currency exchange rates and prices, and economic and financial indices); The Bank of Tokyo, Ltd., 76 Federal Reserve Bulletin 654 (financial advice to foreign governments).

[3] Feasibility studies do not include assisting management with the planning or marketing for a given project or providing general operational or management advice.

spouse) at the time the service is provided exceeds $1,000,000.

(C) Financial advisory activities under this subparagraph may not encompass the performance of routine tasks or operations for a customer on a daily or continuous basis, and the financial advisor shall not make available to any of its affiliates confidential information regarding a party obtained in the course of providing any financial advisory services except as authorized by the party.

* * * * *

(15) *Securities brokerage.* (i) Providing securities brokerage services, related securities credit activities pursuant to the Board's Regulation T (12 CFR Part 220), and incidental activities such as offering custodial services, individual retirement accounts, and cash management services, if the securities brokerage services are restricted to buying and selling securities solely as agent for the account of customers and do not include securities underwriting or dealing; and

(ii) Providing securities brokerage services under paragraph (b)(15)(i) of this section in combination with investment advisory services permissible under paragraph (b)(4) of this section [17] subject to the following requirements:

(A) The company must prominently disclose in writing [18] to each customer before providing any brokerage or advisory services, and, in the case of disclosures required under paragraph (b)(15)(ii)(A) (*1*) of this section, again in each customer account statement, that:

(*1*) The company is solely responsible for its contractual obligations and commitments;

(*2*) The company is not a bank and is separate from any affiliate bank; and

(*3*) The securities sold, offered, or recommended by the company are not insured by the Federal Deposit Insurance Corporation, and are not obligations of, or endorsed or guaranteed in any way by, any bank, unless this is the case; and

(B) The company and its affiliates may not share any confidential information concerning their respective customers without the consent of the customer.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 31, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-21341 Filed 9-9-92; 8:45 am]

BILLING CODE 6210-01-M

[17] Investment advisory services authorized under paragraph (b)(4) include the exercise of discretion in buying and selling securities on behalf of a customer provided that investment discretion is exercised only on behalf of institutional customers and only at the request of the customer. A bank holding company or its subsidiary providing these discretionary investment management services must comply with applicable law, including fiduciary principles, and obtain the consent of its customers before engaging, as principal or as agent in a transaction in which an affiliate acts as principal, in securities transactions on the customer's behalf.

[18] These disclosures may be made orally provided that a written disclosure is provided to the customer immediately thereafter.

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084-AA26

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Water Heaters

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission announces that the present ranges of comparability for water heaters will remain in effect until new ranges are published.

Under the Appliance Labeling Rule, each required label on a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. The Commission publishes the ranges annually in the Federal Register if the upper or lower limits of the range change by 15% or more from the previously published range. If the Commission does not publish a revised range, it must publish a notice that the prior range will be applicable until new ranges are published. The Commission is today announcing that the ranges for water heaters published on September 13, 1991, will remain in effect until new ranges are published.

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202-326-3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Commission issued a final rule, [1] pursuant to section 324 of the Energy Policy and Conservation Act of 1975,[2] covering certain appliance categories, including water heaters. The rule requires that energy cost and related information be disclosed on labels and in retail sales catalogs for all water heaters presently manufactured. Certain point-of-sale promotional materials must disclose the availability of energy usage information. If a water heater is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then the range of estimated annual energy costs for the product must be included on each page of the catalog that lists the product. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of test procedures developed by the Department of Energy, which are referenced in the rule.

Section 305.8(b) of the rule requires manufacturers to report the energy usage of their models annually by specified dates for each product type. [3] Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing.

To keep the required information in line with these changes, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more often than annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect for the next year.

The annual reports for water heaters have been received and analyzed and it has been determined to retain the ranges that were published on September 13, 1991.[4] In consideration of the foregoing, the present ranges for water heaters, which are based on National Average Representative Unit Costs of 60.54 cents per therm for natural gas, 89 cents per gallon for propane, 8.24 cents per kilowatt-hour for electricity, and $1.29 a gallon for No. 2 heating oil, will remain in effect until the Commission publishes new ranges for these products.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, labeling, Reporting and recordkeeping requirements.

The authority citation for part 305 continues to read as follows:

[1] 44 FR 66466, 16 CFR 305.

[2] Public Law 94-163, 89 Stat. 871 (Dec. 22, 1975).

[3] Reports for water heaters are due by May 1.

[4] 56 FR 46524. **List of Subjects in 16 CFR**

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95–619) (1978), the National Appliance Energy Conservation Act, (Pub. L. 100–12) (1987), and the National Appliance Energy Conservation Amendments of 1988, (Pub. L. 100–357) (1988), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92–21727 Filed 9–9–92; 8:45 am]

BILLING CODE 6750–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 19

Reporting Cash Positions in the Grains (Including Soybeans) and Cotton

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission) is amending part 19 of its regulations generally to reduce the frequency with which large traders must file information concerning fixed price cash positions from a weekly to a monthly basis. However, the Commission will continue to require information from cotton traders concerning call purchases and sales on a weekly basis. This change will reduce by about 63 percent the number of reports that are required without materially reducing the Commission's ability to monitor compliance with its speculative position limit rules or to publish its weekly "Cotton on Call" report.

EFFECTIVE DATE: October 13, 1992.

FOR FURTHER INFORMATION CONTACT: Lamont L. Reese, Division of Economic Analysis, 2033 K Street, NW., Washington, DC 20581, Telephone (202) 254–3310.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission periodically reviews information that it receives through its large trader reporting system to determine its adequacy for effective market surveillance. In this regard, the Commission also is mindful of the reporting burden associated with these requirements and reviews them with an eye to ameliorating that burden to the extent compatible with its regulatory mission while maintaining adequate market coverage.

The Commission currently requires that persons owning or controlling futures positions in commodities for which the Commission has established speculative limits file reports concerning their long and short cash positions, i.e., stocks of the commodities owned and the quantity of their fixed-price purchase and sale commitments, 17 CFR part 19 (1991). These commodities include the grains, the soybean complex and cotton. 17 CFR part 150 (1992). The primary purpose for these reports is to determine if the futures positions of traders that exceed the Commission's speculative limits qualify as bona fide hedging transactions or positions as defined in § 1.3(z) of the Commission's regulations.[1] Additionally, merchants and dealers in cotton must provide information on the quantity of their "call purchases and sales." [2] Information concerning call purchases and sales is used as a basis for the Commission's weekly "Cotton on Call" report.

With the exception of merchants and dealers in cotton, reporting levels for cash position reports (CFTC Forms 204 and 304) are set at the speculative limit levels defined in rule 150.2, 17 CFR 150.2 (1992). Merchants and dealers in cotton must file reports at the lower levels specified in 17 CFR 15.03. This lower level for cotton is to ensure adequate coverage of call sales and purchases on the "Cotton on Call" report. The above classes of reportable traders currently are required to file cash position reports on a weekly basis.

As explained in the notice of proposed rulemaking, the cash position information provided on the series 04 reports informs the Commission of a traders' level of activity in the cash market with respect to stocks of the Commodity on hand and fixed-price purchases and sales. This level of activity on the long (or short) side of the market provides a maximum for the quantity of long (short) futures contracts held by a trader which could be considered as hedging under the appropriate sections of the Commission's hedging definition.[3] If the level of cash activity reported by the trader appears not to justify futures positions which exceed speculative limits after adjusting such position for cash market offsets, the Commission may use its authority under § 18.05 of the regulations to more thoroughly explore the matter.[4]

After reviewing its requirements under part 19 with respect to the burden imposed on traders filing weekly series 04 reports and with respect to its surveillance requirements, the Commission proposed that the frequency of filing series 04 reports be reduced from weekly to monthly. The Commission noted that this would achieve a 77 percent reduction in the burden on the industry without materially affecting the Commission's surveillance program. The Commission noted that adoption of this proposal would reduce the frequency of publication of the "Cotton on Call" report and asked for specific comment on the impact of this change.

The Commission received eleven comment letters. Nine primarily concerned the Commission's "Cotton on Call" Report. The other two comment letters supported the proposed reduction in reporting of fixed price cash positions. One commenter, a producer association opined that "this is an example of regulatory relief that would remove a time consuming reporting burden from traders with no real loss of regulatory control by the Commission."

In contrast, the nine persons commenting on the reporting of cotton call purchases and sales adamantly opposed monthly versus weekly reporting.[5] These nine commenters argued that the weekly report provided important information for making marketing decisions, particularly for small firms. Several commenters argued that publication of the "Cotton on Call" report provides the smaller trader with access to information that would otherwise be available only to the larger traders because of their market share. One commenter noted that the "* * * hours devoted to compiling the weekly reports are clearly offset by the value of the information provided to those filing

[1] Among other things, the Commission enumerates as bona fide hedges those short futures positions that do not exceed the quantities of the commodity owned and the quantities of fixed-price purchases of the commodity and those long futures positions that do not exceed the quantities of fixed-priced sales of the commodity. 17 CFR 1.3(z) (1992).

[2] Call purchases and sales are unfixed price purchase and sales commitments transacted as a basis price referenced to a particular cotton futures delivery month.

[3] In particular, see 17 CFR 1.3(z)(2)(i)(A), (2)(ii)(A) and (B), and (iv) (1992).

[4] Section 18.05 of the regulations requires large futures traders to keep books and records of all positions and transactions in a cash commodity that the trader hedges in futures and upon request furnish to the Commission pertinent information concerning such positions and transactions. 17 CFR 18.05 (1992).

[5] Commenters included three associations representing cotton producers, manufacturers and merchants, as well as cotton merchants who file the report.

the reports, to those utilizing the cotton contract."

In view of the fact that members of the cotton industry are willing to accept the burden associated with reporting cotton call purchases and sales, the Commission is not amending this requirement as proposed and will instead continue to require weekly reporting of call purchases and sales in cotton. With respect to reporting stocks and fixed price purchases and sales, however, the Commission is adopting its amendments as proposed. As the producer association noted, this will reduce reporting burdens for a number of traders with no impact on the Commission's regulatory program.

Under part 19, as amended, all traders in the grains, soybean complex, or cotton (if they have no open call purchase and sales commitments), would file a CFTC Form 204 or 304 as of the last Friday of each month showing components of their fixed price cash position if their futures positions are reportable pursuant to § 15.00(b)(1)(ii), 17 CFR 15.00(b)(i)(ii)(1991).[6] The Commission also retains the authority to call for this information on a more frequent basis for selected firms as needed. Merchants and dealers in cotton would additionally file a CFTC Form 304 on a weekly basis showing open call purchase and sale commitments on their books if their futures positions in cotton are reportable pursuant to § 15.00(b)(1)(i), 17 CFR 15.00(b)(1)(i)(1992).[7] This maintains the current coverage and frequency of the "Cotton on Call" report yet affords relief to traders who do not make call purchases or sales in cotton. The Commission estimates that adoption of its proposal as amended will reduce the current reporting burden by about 63 percent.

II. Related Matters

A. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that agencies, in proposing rules, consider the impact of those rules on small businesses. These amendments affect large traders. The Commission has previously defined "small entities" in evaluating the impact of its rule in accordance with the RFA, 47 FR 18618–18621 (April 30, 1982). In that statement, the Commission concluded that large traders are not considered to be small entities for purposes of the RFA. Moreover, in its notice of proposed rulemaking the Commission noted that the proposed amendments lessen an existing burden on large traders. Pursuant to section 3(a) of the RFA (5 U.S.C. 605(b)), the Chairman, on behalf of the Commission, certified in its issuance of proposed rulemaking that the proposed rules would not have a significant economic impact on a substantial number of small entities. The Commission invited comments from any firm which believed that these rules would have a significant economic impact upon its operations. No comments were received.

b. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission previously submitted this rule in proposed form and its associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget approved the collection of information associated with this rule on May 13, 1992 and assigned OMB control number 3038–0009 to the rule. The burden associated with this entire collection, including this amended rule, is as follows:

Average burden hours per response	.174
Number of respondents	3709
Frequency of response	Daily

The burden associated with this specific rule is as follows:

Average burden hours per response	1.0693
Number of respondents	294
Frequency of response	Weekly

Persons wishing to comment on the information which would be required by these rules should contact Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503, (202) 395–7304. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581, (202) 254–9735.

List of Subjects in 17 CFR Part 19

Brokers, Commodity futures, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act and, in particular, sections 4g, 4i, 5 and 8a of the Act, 7 U.S.C. 6g, 6i, 7 and 12a, the Commission hereby amends part 19 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 19—REPORTS BY PERSONS HOLDING BONAFIDE HEDGE POSITIONS PURSUANT TO SECTION 1.3(Z) OF THIS CHAPTER AND BY MERCHANTS AND DEALERS IN COTTON

1. The authority citation for part 19 continues to read as follows:

Authority: 7 U.S.C. 6(g)(1), 6i and 12a(5).

§ 19.00 [Amended]

2. Section 19.00 is amended by revising the introductory language of paragraph (b) as follows:

§ 19.00 General provisions.

* * * * *

(b) *Manner of Reporting.* The manner of reporting the information required in § 19.10 is subject to the following:

* * * * *

§ 19.01 [Amended]

3. Section 19.01 is amended by revising the section heading; by revising the introductory text and designating it as paragraph (a); redesignating paragraphs (a), (b) and (c) as (a)(1), (a)(2) and (a)(3) respectively; by revising newly designated paragraph (a)(3); and by adding a new paragraph (a)(4), (a)(5), and (b) to read as follows:

§ 19.01 Reports on stocks and fixed price purchases and sales pertaining to futures positions in wheat, corn, oats, soybeans, soybean oil, soybean meal or cotton.

(a) *Information Required*—Persons required to file '04 reports under § 19.00(a)(1) or § 19.00(a)(3) of this chapter shall file CFTC Form 304 reports for cotton and form 204 reports for other commodities showing the composition of the fixed price cash position of each commodity hedged in the futures contract market including:

* * * * *

(3) The quantity of fixed price sale commitments open in such cash commodities and their products and byproducts; and in addition for cotton,

(4) The quantity of equity in cotton held by the Commodity Credit Corporation under the provisions of the Upland Cotton Program of the

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[6] Rule 15.00(b)(1)(ii) defines a reportable futures position as any open contract position in any one future or in all futures combined which at the close of the market on the last business day of the week exceeds the net quantity limit in spot, single or in all months in rule 150.2, 17 CFR rule § 150.2(1992).

[7] Rule 15.00(b)(1)(i) defines a reportable position as any open contract position in any one future of any commodity on any one contract market which equals or exceeds the quantity specified in Section 15.03, 17 CFR 15.03 (1992). The level specified in Rule 15.03 for cotton is 50 contracts. This compares to levels of 300, 450 and 1200 contracts for spot, single and all months combined specified in Rule 150.2, which is the reportable level for cotton traders who do not have open call commitments.

Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(5) The quantity of certificated cotton owned.

(b) *Time and place of filing reports*—Except for reports filed in response to special calls made under § 19.00(a)(3), each report shall be made monthly, as of the close of business on the last Friday of the month, and filed at the appropriate Commission office specified in paragraph (b) (1) or (2) of this section not later than the second business day following the date of the report in the case of the 304 report and not later than the third business day following the date of the report in the case of the 204 report. Reports may be transmitted by facsimile or, alternatively, information on the form may be reported to the appropriate Commission office by telephone and the report mailed to the same office, not later than midnight of its due date.

(1) CFTC Form 204 reports with respect to transactions in wheat, corn, oats, soybeans, soybean meal and soybean oil should be sent to the Commission's office in Chicago, Il. unless otherwise specifically authorized by the Commission or its designee.

(2) CFTC Form 304 reports with respect to transactions in cotton should be sent to the Commission's office in New York, NY, unless otherwise specifically authorized by the Commission or its designee.

§ 19.02 [Amended]

4. Section 19.02 is revised to read as follows:

§ 19.02 Reports pertaining to cotton call purchases and sales.

(a) *Information Required*—Persons required to file '04 reports under § 19.00(a)(2) of this chapter shall file CFTC Form 304 reports showing the quantity of call cotton bought or sold on which the price has not been fixed, together with the respective futures on which the purchase or sale is based. As used herein, call cotton refers to spot cotton bought or sold, or contracted for purchase or sale at a price to be fixed later based upon a specified future.

(b) *Time and place of filing reports*—Each report shall be made weekly as of the close of business on Friday and filed at the Commission's office in New York, NY, not later than the second business day following the date of the report. Reports may be transmitted by facsimile or, alternatively, information on the form may be reported to the appropriate Commission office by telephone and the report mailed to the same office, not later than midnight of its due date.

§ 19.10 [Removed]

5. Section 19.10 is removed and reserved.

Issued in Washington, DC, this 1st day of September, 1992, by the Commission.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 92-21513 Filed 9-9-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Initial Hearings for Prisoners With Minimum Terms of 10 Years or More

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is amending a procedural rule to clarify the procedures for conducting initial hearings for prisoners serving minimum terms of parole ineligibility of 10 years or more. The Commission's procedural change does not change the Commission's policy with regard to conducting initial hearings for inmates with minimum terms of 10 years or more with the exception that the initial hearing will be conducted earlier at six months prior to the completion of the minimum term, rather than 90 days prior to the completion of the minimum term. The earlier initial hearing will give a parole applicant who is paroled at his eligibility more time to make release plans and to have an opportunity to be transferred to a halfway house prior to his release on parole.

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION CONTACT: Richard K. Preston, Attorney, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland, 20815. Telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: The previous language relating to when an initial hearing should be conducted for a prisoner who has a 10-year minimum term was unclear. The prior rule reflected the Commission's intention to wait until 90 days prior to the completion of the minimum term to conduct that hearing, however, it erroneously implied that the Commission's policy was that hearings could be conducted at any time prior to 90 days. The amended provision advances when an initial hearing will be conducted and makes it clear that the Commission does not intend to conduct an initial hearing before six months prior to the completion of the minimum term.

The Commission has modified the regulation to provide that an initial hearing could be conducted six months prior to the completion of the minimum term so that prisoners who receive parole dates at their parole eligibility would qualify for halfway house placement. The Commission decided to set the initial hearing at six months prior to eligibility so that an effective parole date (rather than a presumptive parole date) could be set for those inmates who received parole dates on their eligibility date at their initial hearing.

Executive Order 12291 and Regulatory Flexibility Act Statement

The U.S. Parole Commission has determined that this rule is not a major rule in the meaning of Executive Order 12291. This procedural regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, crime, juvenile delinquency, prisoners, privacy, probation, parole, and youth.

Accordingly, the Parole Commission adopts an interpretative regulation amending 28 CFR part 2 as follows:

PART 2—[AMENDED]

1. The authority citation for 28 CFR part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR 2.12(a) is revised to read as follows:

§ 2.12 Initial hearings: Setting presumptive release dates.

(a) An initial hearing shall be conducted within 120 days of a prisoner's arrival at a federal institution or as soon thereafter as practicable; except that in a case of a prisoner with a minimum term of parole ineligibility of ten years or more, the initial hearing will be conducted six months prior to the completion of such a minimum term, or as soon thereafter as practicable.

* * * * *

Dated: August 20, 1992.

Jasper R. Clay,

Vice Chairman, U.S. Parole Commission.

[FR Doc. 92-21833 Filed 9-9-92; 8:45 am]

BILLING CODE 4410-01-M

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Effect of a Conspiracy Conviction on a Prisoner's Parole Guidelines

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is revising its guidelines to clarify its policy that a prisoner who is convicted on a conspiracy charge is rated according to the offense carried out, or intended, by the entire conspiracy. The guidelines already provide for joint accountability among co-conspirators if the criminal activities of the prisoner's associates were either under his control or reasonably foreseeable. The guidelines have not, however, specified that a conspiracy conviction itself provides the basis for such a finding by the Commission. A recent court decision holding that proof of control or foreseeability is required under the Commission's guidelines, notwithstanding a conspiracy conviction, has made it necessary for the Commission to specify the effect of a conspiracy conviction on the parole guideline evaluation.

EFFECTIVE DATE: October 13, 1992.

FOR FURTHER INFORMATION CONTACT: Richard Preston, Office of General Counsel, Telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: Following the decision in *U.S. ex rel. John Farese* v. *Dennis Luther*, 953 F.2d 49 (3d Cir. 1992), the Commission published a proposed rule at 57 FR 21209 (May 19, 1992) to clarify the Commission's policy that, when a prisoner has been convicted of a conspiracy, he must be held accountable for the criminal activities committed by his confederates, provided such activities were committed in furtherance of the conspiracy and subsequent to the date the prisoner joined the conspiracy. In brief, it was the Commission's intent to continue assigning guideline offense severity ratings in accord with the traditional legal liability of conspirators. See *Pinkerton* v. *United States*, 328 U.S. 640 (1946).

Public comment brought to the Commission's attention a proposed amendment by the U.S. Sentencing Commission to USSG sec. 1B.3(a)(1), under which sentencing guidelines are to be based only on that aspect of a conspiracy in which the defendant was directly engaged. The premise for a policy of considering only "the criminal activity the particular defendant agreed to jointly undertake (*i.e.*, the scope of the specific conduct and objectives embraced by the defendant's agreement)", is that a conspiracy count " * * * may be worded broadly and include the conduct of many participants over a period of time * * * " so that it may not be fair to hold each co-conspirator accountable for the size and extent of the entire conspiracy.

The Parole Commission is not persuaded that this is necessarily a good model to follow. The real underlying concern, however, is a valid one. This is the potential unfairness of rating "minor cogs" who operate on the fringes of large conspiracies, as if they were responsible for the whole organization. The Parole Commission believes that a more specific exclusion for this type of case is the more appropriate way to avoid the possibility of Draconian punishments. Otherwise, a rating system that allows substantial participants in a conspiracy to "carve out" a limited role for themselves in what they know to be a larger organization would not permit a true measure of the seriousness of the offense.

As the dissent in *Farese* v. *Luther* pointed out, with respect to an independent wholesaler in a "spoke and wheel" narcotics conspiracy, the existence of additional co-conspirators is usually obvious because the offender knows that he is not the exclusive distributor for his source of supply, and that the conspiracy in which he is involved necessarily extends beyond himself and his source. 953 F.2d 54–55. An adequate accounting must be made for a decision to participate in, and benefit from, the existence of the larger organization. As pointed out in *Cerullo* v. *Gunnell*, 586 F. Supp. 211, 215 (D.Conn. 1983):

> The essence of the crime of conspiracy is the illegal and dangerous combination of persons to pursue unlawful ends. The criminal synergy created by such a cabal threatens society more than do the isolated acts of individuals.

Hence, the marijuana importer who functions as part of a diversified conspiracy that includes both marijuana and cocaine operations indirectly makes possible the continued life of a multi-faceted (and therefore more socially-threatening) conspiracy. He should not be permitted to evade his contributory responsibility for the entire structure by " * * * hiding his head in the sand and blaming others." See *McArthur* v. *U.S. Board of Parole*, 434 F.Supp. 163 (S.D. Ind. 1976).

Moreover, the Commission is unwilling to start down the road of disregarding the indictments that support guilty pleas and jury verdicts in any type of case. The integrity of our criminal justice system requires that convictions be respected in sentencing and parole decisions. If indictments can be reargued in conspiracy cases on the ground that they are too "broadly worded", then there is no reason why indictments may not also be challenged in other types of cases (*e.g.*, complex financial frauds) where indictments may also be challenged as overly broad. Parole hearings will not become forums for rearguing convictions.

However, in response to the legitimate concern that "minor cogs" in vast conspiracies should be fairly punished, the Commission has added to the proposed rule an exclusion for an independent, small-scale operator whose role in the conspiracy was neither established nor significant.

Executive Order 12291 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this rule is not a major rule within the meaning of Executive Order 12291. This rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the regulatory flexibility act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, probation and parole, prisoners.

Accordingly, the U.S. Parole Commission adopts a final rule amending 28 CFR part 2 as follows:

PART 2—[AMENDED]

1. The authority citation for 28 CFR part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. The following sentence is added to § 2.20, chapter 13, subchapter A, general note 4:

§ 2.20 Parole policy guidelines: Statement of general policy.

Chapter Thirteen General Notes and Definitions

Subchapter A—General Notes

4. * * * However, if the prisoner has been convicted of a conspiracy, he must be held accountable for the criminal activities committed by his co-conspirators, provided such activities were committed in furtherance of the conspiracy and subsequent to the date the prisoner joined the conspiracy, except in the case of an independent, small-scale operator whose role in the conspiracy was neither established nor significant. An offender has an "established" role in a conspiracy if, for example, he takes orders to

perform a function that assist others to further the objectives of the conspiracy, even if his activities did not significantly contribute to those objectives. For such offenders, however, a "peripheral role" reduction may be considered.

* * * * *

Dated: August 21, 1992.

Jasper R. Clay, Jr.,

Vice Chairman, U.S. Parole Commission.

[FR Doc. 92-21829 Filed 9-9-92; 8:45 am]

BILLING CODE 4410-01-M

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28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Defining Value of Property Loss in the Parole Guidelines for Theft, Forgery, and Frauds

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending its guidelines to improve upon the definition of the term "value of the property", which is used in the guidelines for rating cases of theft, forgery, and fraud. The purpose of the amended rule is to clarify how these offenses are to be rated on the guidelines when the victim has recovered his money or property following detection of the crime, and when the victim was unlawfully exposed to risk of loss without actual loss having been sustained.

EFFECTIVE DATE: October 13, 1992.

FOR FURTHER INFORMATION CONTACT: Richard Preston, Office of General Counsel, Telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: The Commission published a proposed rule to improve upon the definition of the term "value of the property" at 28 CFR 2.20, chapter 13, subchapter B, definition No. 21, at 57 FR 21221 (May 19, 1992). A favorable comment was received from a U.S. Probation Office, but not other comment on this proposal was submitted to the Commission.

As explained in the proposed rule, the new definition of the term "value of the property" is intended to conform to existing Commission practice with respect to theft, forgery, and frauds wherein the crime has resulted in no dollar loss to the victim, or the victim has recovered all or part of the value lost. The Commission has consistently rated such offenses according to the loss that the offender intended to cause, or the total amount of the victim's property or money unlawfully placed at risk of loss through the offender's criminal conduct. Moreover, the Commission has consistently evaluated such crimes without discounting money or property which the victim has been able to recover following completion of the crime. These policies are reflected in the final rule, which is adopted unchanged from the proposed rule.

Executive Order 12291 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this is not a major rule within the meaning of Executive Order 12291. This rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, probation and parole, prisoners.

Accordingly, the Parole Commission adopts a final rule amending 28 CFR part 2 as follows:

PART 2—[AMENDED]

1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Section 2.20 is amended by revising the definition of the term "value of the property" contained in Chapter 13, Subchapter B, Definition 20, to read as follows:

§ 2.20 Paroling policy guidelines: Statement of general policy.

Chapter Thirteen General Notes and Definitions

* * * * *

Subchapter B—Definitions

* * * * *

20. The "value of the property" is determined by estimating the actual or potential replacement cost to the victim. The "actual replacement cost" is the value or money permanently lost to the victim through theft/forgery/fraud. The "potential replacement cost" refers to the total loss the offender specifically intended to cause by theft/forgery/fraud, or the total amount of the victim's money or property unlawfully exposed to risk of loss through theft/forgery/fraud notwithstanding subsequent recovery by the victim. The highest of these three values is the value to be used in rating the offense on the guidelines.

* * * * *

Dated: August 27, 1992.

Jasper R. Clay, Jr.,

Vice Chairman, U.S. Parole Commission.

[FR Doc. 92-21831 Filed 9-9-92; 8:45 am]

BILLING CODE 4410-01-M

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Applicability of Mandatory Maximum and Minimum Terms to Prisoners Transferred by Treaty

AGENCY: Parole Commission.

ACTION: Final rule.

SUMMARY: The Parole Commission has adopted an interpretative regulation to clarify the applicability of various maximum and minimum terms found in the U.S. Code to release date determinations for prisoners transferred pursuant to prisoner exchange treaties. The Commission has concluded that the maximum and minimum terms that govern sentencing decisions in U.S. District Courts are applicable to prisoners transferred pursuant to treaty, when the U.S. Parole Commission sets a release date and a term of supervised release.

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION CONTACT: Richard K. Preston, Attorney, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone: (301) 492-5959.

SUPPLEMENTARY INFORMATION: Pursuant to 18 U.S.C. 4106A, the Parole Commission must set a release date and a term of supervised release for prisoners who have been transferred pursuant to treaty to continue serving their foreign sentences in the United States. In setting a release date for any exchange treaty prisoner who committed his offense on or after November, 1987, the Parole Commission is required to apply the sentencing guidelines that pertain to the U.S. Code offense that is most similar to the foreign offense the prisoner committed. However, the sentencing guidelines contain a provision at section 25G1.1 that describes how United States Code offenders (as opposed to foreign code offenders) will be sentenced where the offense of conviction is limited by statutory maximum and minimum terms. In essence, the sentencing guidelines provide that if there is a statutory maximum sentence for a particular U.S. Code violation that is less than the minimum of the applicable guideline range, then the statutorily authorized maximum sentence becomes the guideline sentence. Additionally, if there is a statutorily required minimum sentence for a U.S. Code offense, and that minimum sentence is greater than the maximum of the applicable guideline

range, then the statutorily required minimum sentence would become the guideline sentence.

In reviewing the history of the Parole Commission's authority to set release dates for prisoners transferred pursuant to treaty and the developing case law, the Commission adopted an interpretative regulation that concludes that the statutory maximum and minimum terms required for U.S. Code violators are not applicable to prisoners transferred pursuant to treaty at its April, 1992, meeting. The Commission founded this interpretation on several grounds.

First, the Parole Commission is not imposing a sentence when it determines a release date pursuant to 18 U.S.C. 4106A. *See Hansen* v. *U.S. Parole Commission*, 904 F.2d 306 (5th Cir. 1990). A foreign court imposed the sentence based upon a violation of foreign law which, obviously, did not contain the statutory minimum or maximum terms applicable to U.S. Code violators.

Second, the transferred offenders have not been charged or convicted of violating any U.S. Code offense to which Congress has deemed the mandatory maximum and minimum provisions applicable. In certain circumstances, a U.S. prosecutor must specifically plead in an indictment that the accused U.S. Code offender has a prior conviction before a mandatory minimum term may be imposed. See, e.g., 21 U.S.C. 841(b). Since foreign code offenders have not been convicted of violating any U.S. Code provision, there would have been no opportunity for the foreign prosecutor to make the requisite pleading required of U.S. prosecutors for U.S. Code offenders.

Third, the applicability of mandatory minimum or maximum terms would be inconsistent with the treatment of prisoners transferred pursuant to treaty who committed their offenses before November 1, 1987. Prisoners who committed their offenses before November 1, 1987, are immediately eligible for parole and the U.S. Code provisions restricting or prohibiting parole for certain offenses do not apply to those "old law" treaty cases. Additionally, the foreign sentences are not reduced if they exceed the statutory maximum applicable to the equivalent U.S. Code offense.

Finally, the Commission finds that Congress did not want to alter the length of the sentences imposed by the foreign court as it might breach the bilateral treaties and conventions in force between the United States and various foreign governments.

Those treaties and conventions require that the foreign sentence be respected. Therefore, it is apparent that Congress did not intend for foreign code violators serving sentences imposed by foreign courts in a U.S. institution to serve the mandatory minimum term that might have been applicable to a similar U.S. Code offender if that minimum term were greater than the foreign term imposed.

Executive Order 12291 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this rule is not a major rule in the meaning of Executive Order 12291. This procedural regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, crime, juvenile delinquency, prisoners, privacy, probation, parole, and youth.

Accordingly, the Parole Commission adopts an interpretative regulation amending 28 CFR part 2 as follows:

PART 2—[AMENDED]

1. The authority citation for 28 CFR part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. The provisions relating to applicability and jurisdiction over transfer treaty cases found at 28 CFR 2.62(a)(1) is revised to read as follows:

§ 2.62 Prisoners transferred pursuant to treaty.

(a) *Applicability and jurisdiction.* (1) Prisoners transferred by treaty who committed their offenses on or after November 1, 1987, shall receive a special transferee hearing pursuant to the procedures found in this section and 18 U.S.C. 4106A as amended by the Anti-Drug Abuse Act of 1988. Prisoners transferred by treaty who committed their offenses prior to November 1, 1987, are immediately eligible for parole and shall receive a parole hearing pursuant to the procedures found at 28 CFR 2.13. The scope of the Commission's authority to set a release date and terms and conditions of supervised release in either case is the limit of the sentence imposed by the foreign court, and the Commission shall treat the foreign conviction as though it were a lawful conviction in a U.S. District court. It is the Commission's interpretation of 18 U.S.C. 4106A that the U.S. Code provisions restricting parole or requiring mandatory minimum terms or minimum periods of supervised release shall not apply to release decisions concerning prisoners transferred pursuant to treaty who are serving terms of imprisonment imposed by foreign courts for violating foreign laws.

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Dated: August 20, 1992.

Jasper R. Clay, Jr.,

Vice Chairman, U.S. Parole Commission.

[FR Doc. 92-21834 Filed 9-9-92; 8:45 am]

BILLING CODE 4410-01-M

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28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Interim Procedures for Prisoners Serving Aggregated U.S. and D.C. Code Sentences

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission has adopted a final rule that sets forth parole procedures for prisoners serving aggregated U.S. and D.C. Code sentences. An interim rule was published in 1989, pending the outcome of class-action litigation in the U.S. District Court for the District of Columbia, which has now been resolved. The final rule contains changes from the interim rule in order to comply with a decision of the U.S. Court of Appeals for the Seventh Circuit (adopted in the class-action ruling), holding that the Commission may not delay an eligible prisoner's D.C. parole hearing beyond completion of the "federal time" that is assessed by the Commission to satisfy the U.S. parole guidelines. The overall purpose of the rule remains that of reconciling both U.S. and D.C. parole statutes and regulations within the framework of a single aggregated sentence.

EFFECTIVE DATE: Effective October 13, 1992.

FOR FURTHER INFORMATION CONTACT: Richard Preston, Staff Attorney, at (301) 492-5959.

SUPPLEMENTARY INFORMATION: The interim regulation was originally published at 54 FR 27841 (June 30, 1989) in order to comply with a class-action decision in *Cosgrove* v. *Thornburgh*, Civil Action No. 80-5016-NHJ, in the U.S. District Court for the District of Columbia. Because the status of mixed sentence cases in this class-action lawsuit had not yet been resolved at that time, the Commission did not publish a final rule.

Subsequent to the publication of this interim rule, litigation arose in other circuits over the application of the

interim rule to individual class members. In *Thomas* v. *Brennan*, 961 F.2d 612 (7th Cir. 1992), the court upheld the interim regulation with the exception of the provision at 28 CFR 2.66(f), which sets forth the method by which the Commission determines whether a "mixed sentence" prisoner should serve his D.C. "minimum time" consecutively to his "federal time" before receiving a "D.C. parole hearing" to determine his suitability for release under the guidelines of the D.C. Board of Parole. The Court held that the Commission may delay the D.C. parole hearing for a mixed sentence prisoner until completion of his federal time in order to satisfy applicable U.S. Code parole laws and regulations, but that the Commission may not postpone the prisoner's D.C. parole hearing thereafter in order to establish a "D.C. minimum time" to satisfy the offense severity requirements of the D.C. guidelines. Instead, the court required the Commission to hold the D.C. parole hearing for an eligible prisoner prior to completion of the "federal time." This holding was subsequently adopted in *Cosgrove* v. *Thornburgh*. By the time *Cosgrove* v. *Thornburgh* was finally decided (on August 14, 1992), the Commission had already elected to amend the interim rule on a nationwide basis in response to *Thomas* v. *Brennan*. Therefore, a final rule is now appropriate.

Compliance with the final rule will result, for many prisoners whose cases have already been heard by the Commission, in advancements of their scheduled D.C. parole hearings. Advancements will be ordered as such cases come before the Commission for review, or upon a request from a prisoner or case manager. Moreover, eligible prisoners will be given the benefit of retroactive application of the procedures applicable at a D.C. parole hearing (including rehearings), if that hearing is held after completion of the prisoner's "federal time." All "mixed sentence" prisoners whose cases are initially heard after the effective date of this regulation will have their D.C. parole hearings scheduled in accordance therewith.

The final rule includes an expanded statement of the Commission's policy for granting parole at a D.C. parole hearing. The decisions in *Thomas* v. *Brennan* and *Cosgrove* v. *Thornburgh* concern only the timing of a "mixed sentence" prisoner's D.C. parole hearing, and do not remove the Commission's obligation to ensure that all grants of parole in such cases must conform to the requirements of D.C. law and regulations relating to the need to account for the seriousness of the crime and the danger release would pose to the public welfare. That is, the seriousness of the D.C. Code offense behavior, including mitigating and aggravating offense circumstances, as well as the nature and extent of the prisoner's criminal history, must be fully taken into account in any parole decision pursuant to D.C. laws and regulations.

Moreover, at the D.C. parole hearing, the Commission will make a comprehensive evaluation of the prisoner's suitability for parole in light of all the offense behaviors he may have committed during his criminal career. In some situations, for example, a comprehensive review of the U.S. and D.C. Code offense behaviors committed by the prisoner will reveal a pattern of sustained, assaultive, or otherwise dangerous behavior warranting a denial of parole notwithstanding a favorable D.C. point score. Many "mixed sentence" offenders are individuals convicted of multiple, often violent offenses under both the U.S. and D.C. Codes, reflecting extreme (or unusually sustained) criminal tendencies. Such individuals should not expect the Commission to make two separate parole decisions, each exclusively focusing on the U.S. or D.C. Code offenses under consideration. There must be an adequate accounting of the prisoner's actual criminal propensities if the Commission is to arrive at a realistic evaluation of the prisoner's suitability for parole.

Executive Order 12291 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this rule is not a major rule within the meaning of Executive Order 12291. This amended rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, probation and parole, prisoners.

Accordingly, the Parole Commission adopts an interim rule amending 28 CFR part 2 as follows:

PART 2—[AMENDED]

Accordingly, 28 CFR part 2 is amended as follows:

1. The authority citation for part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Section 2.66(e) is revised to read as follows:

§ 2.66 Paroling policy for prisoners serving aggregate U.S. and D.C. Code sentences.

* * * * *

(e) *Scheduling the D.C. parole hearing.* The Commission shall then schedule a D.C. parole hearing to be conducted not later than four months prior to the parole eligibility date, or the expiration of the "federal time," whichever is later. At the D.C. parole hearing the Commission shall apply the point score system of the D.C. Board of Parole, pursuant to the regulations of the D.C. Board of Parole, to determine the prisoner's suitability for release on parole.

* * * * *

3. Section 2.66(f), as it presently reads, is removed, and § 2.66(g) is redesignated as § 2.66(f). The newly redesignated § 2.66(f) is revised to read as follows:

* * * * *

(f) *Granting parole.* In determining whether or not to grant parole pursuant to the point score system of the D.C. Board of Parole, and the length of any continuance for a rehearing if parole is denied, the Commission shall presume that the eligible prisoner has satisfied basic accountability for the D.C. Code offense behavior. However, the Commission retains the authority to consider any unusual offense circumstances pursuant to 28 DCMR 204.22 to deny parole despite a favorable point score, and to set a rehearing date beyond the ordinary schedule. The Commission shall also consider whether the totality of the prisoner's offense behaviors (U.S. and D.C. Code) warrants a continuance to reflect the true seriousness or the degree of the risk that the release of the prisoner would pose for the public welfare. Nonetheless, the Commission shall not deny parole or order a continuance, solely on the ground of punishment for the U.S. Code offenses standing alone, or on grounds that have been adequately accounted for in a decision to exceed the federal guideline range.

* * * * *

4. Section 2.66(h) is redesignated as § 2.66(g), and amended by removing the words "and to determine when the D.C. minimum time shall be satisfied" from the first sentence in that paragraph. In addition, the last sentence of the newly redesignated § 2.66(g) is revised to read as follows:

* * * * *

* * * After the D.C. parole hearing, rehearings shall be conducted pursuant to the rules and policy guidelines of the D.C. Board of Parole, if release on parole is not granted.

* * * * *

5. Sections 2.66(i) and 2.66(j) are hereby redesignated as §§ 2.66(h) and 2.66(i), respectively.

Dated: August 21, 1992.

Jasper R. Clay, Jr.,

Vice Chairman, U.S. Parole Commission.

[FR Doc. 92-21830 Filed 9-9-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806

RIN 0701-AA31

Air Force Freedom of Information Act Program

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force revised its regulations on disclosure of records to provide substantive and administrative changes. The intended effect is to provide current information on Air Force policy and procedures for the disclosure of records to the public under the Freedom of Information Act. This revision implements the provisions set forth by the Department of Defense Directive 5400.7, May 13, 1988 and Department of Defense Regulation 5400.7, October 1990, and Change 1, May 10, 1991.

EFFECTIVE DATE: July 31, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Anne W. Turner, Department of the Air Force, SAF/AAIA, Pentagon, room 4A1088E, Washington, DC 20330-1000, telephone (703) 697-3491.

SUPPLEMENTARY INFORMATION: Because this part implements a higher authority directive, it is not published as a proposed rule for public comment. The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291; is not subject to the relevant provisions of the Regulatory Flexibility Act (5 U.S.C. 601-611); and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act (44 U.S.C. chapter 35). Part 806 is Air Force Regulation (AFR) 4-33, Air Force Freedom of Information Act Program, July 31, 1992.

List of Subjects in 32 CFR Part 806

Freedom of information, Classified information, Records.

Accordingly, 32 CFR part 806 is revised as follows:

PART 806—AIR FORCE FREEDOM OF INFORMATION ACT PROGRAM

Subpart A—General Information

Subpart B—Submitting FOIA Requests

Subpart C—Records Disclosure Policies

Subpart D—Disclosure and Denial Authorities

Subpart E—Processing FOIA Requests

Subpart F—Fee Assessment, Categories, Aggregations, Restrictions, Waivers, and Rates

Subpart G—Processing Appeals

Subpart H—For Official Use Only Information

Authority: 5 U.S.C. 552.

Subpart A—General Information

§ 806.0 Purpose.

This part sets policy for the disclosure of records to the public and for the Air Force Freedom of Information Act (FOIA) Program. It gives procedures for processing FOIA requests and tells the public how to request copies of Air Force records using the FOIA (5 U.S.C. 552, as amended). It sets mandatory time limits for notifying requesters of the decision to release or deny records requested under the FOIA. Also, it prescribes the use of the FOIA system for FOIA management and reporting. It sets policy and procedures for marking, handling, transmitting, and safeguarding For Official Use Only (FOUO) material. This part implements Department of Defense (DoD) Directive 5400.7, 13 May 1988, (32 CFR 285) and DoD Regulation 5400.7-R, October 1990, and Change 1, 10 May 1991 (32 CFR 286). It applies to all Air Force activities, including the Air National Guard (when published in NGR (AF) 0-2), the US Air Force Reserve, and those specified commands supported by the Air Force and listed in AFR 23-14. In case this part conflicts with other Air Force publications, this part takes precedence over any that deals in whole or in part with the disclosure of records to the public.

§ 806.1 Freedom of Information Act requests.

This guidance applies to written FOIA requests for records (see § 806.2(i) and (o)), including those received by facsimile machine received from any member of the public, including foreign citizens, military and civilian personnel acting as private citizens, and organizations and businesses. This includes FOIA requests from individual members of the Congress (whether on their own behalf or on behalf of

constituents. Processing procedures for FOIA requests from individual members of the Congress are the same as they are for any other FOIA requester. This guidance does not apply to a request from a Federal agency or a fugitive from the law. Requesters should not use Government equipment, supplies, stationery, postage, telephones, or official Air Force mail channels for making FOIA requests. However, FOIA managers will process these FOIA requests but will advise requesters that using government resources to make FOIA requests is not an authorized official use.

§ 806.2 Terms explained.

(a) Appellate authority. The Administrative Assistant to the Secretary of the Air Force, who makes appellate decisions on FOIA appeals.

(b) Denial. A determination by a denial authority not to disclose requested records in its possession and control.

(c) Denial letter. A letter that informs the requester of the denial authority's determination to withhold some or all of the requested records or information.

(d) Determination. The decision to grant or deny all or part of a request from the public for records.

(e) Disclosure. Providing access to, or a copy of, a record.

(f) Disclosure authority. Official authorized to disclose records. See § 806.17 for qualifying positions.

(g) Electronic data. Records or information created, stored, and retrieved by electronic means. Electronic records do not include computer software used as a tool to create, store, or retrieve electronic data.

(h) FOIA manager. The person responsible for managing the FOIA program at each organizational level.

(i) FOIA request. A written request for records from the public (see § 806.1) that cites or implies the FOIA. This includes references to this part or the 32 CFR 286 (DOD 5400.7–R), the 10-workday statutory time limit (see paragraph (q) of this section) associated with the public release of agency records, 5 U.S.C. 552, the Law, the Statute, the Act, or references to FOIA in the address element on a letter or its envelope.

(j) Functional request. A request for records that does not specifically cite or imply the FOIA. See § 806.22(e)(5) for processing procedures.

(k) Glomar response. A reply that neither confirms nor denies the existence or nonexistence of the requested record. A Glomar response may be used with FOIA exemptions (1), (6), and (7)(C). See § 806.15(a), (f), and (g).

(l) Initial denial authority (IDA). Persons in authorized positions who may deny records under the FOIA. See § 806.18 for qualifying positions.

(m) Partial denial. Determination to withhold any part of a requested agency record.

(n) Public interest. Disclosures of official information that shed light on an agency's performance of its statutory duties are in the public interest for purposes of the FOIA because doing so informs citizens about what their government is doing. That statutory purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files that reveals little or nothing about an agency's or official's own conduct.

(o) Records. (1) The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the US Government in connection with the transaction of public business and in the agency's possession and control at the time it receives the request. Records such as notes, working papers, and drafts kept as historical evidence of actions are subject to the FOIA, but may be exempt from release under exemption (b)(5).

(2) In rare cases, computer software may qualify as an agency record. Evaluate the situations on a case-by-case basis. Some examples of when you may have to treat computer software as an agency record are:

(i) When the data is embedded within the software and cannot be extracted without the software. In this situation, both the data and the software must be reviewed for release or denial under the FOIA.

(ii) Where the software itself reveals information about organizations, policies, functions, decisions, or procedures of the DoD, such as computer models used to forecast budget outlays, to calculate retirement system costs, or to optimize models on travel costs.

(p) Search. The time expended to locate a requested record or a specific section of a record. This includes telephone, manual, or computer searches conducted to find and retrieve a record.

(q) Statutory time limits. The 10 workdays following receipt of the request imposed by the FOIA to inform the requester of the initial decision on releasability. This term also covers the additional 10-workday extension allowed under circumstances explained in § 806.26. The time limits begin only when the FOIA manager receives a properly filed request, reasonably describing the records requested with fee issues addressed either by an agreement to pay fees and satisfaction as to category determination, approval of a request for fee waiver or reduction of fees, or fees paid.

(r) Workday. An official duty day; excludes Saturdays, Sundays, and legal public holidays.

§ 806.3 Material outside the scope of the FOIA.

(a) Examples of non-agency records. Materials discussed in paragraphs (a) (1) through (4) of this section are not considered records under FOIA and should be handled according to paragraphs (b) (1), (2), and (3) of this section when procedures exist outside this part for processing those requests.

(1) Objects or articles, such as structures, furniture, vehicles, and equipment, whatever their historical value, or value as evidence.

(2) Administrative tools used to create, store, and retrieve records, if not created or used as sources of information about organizations, policies, functions, decisions, or procedures of DoD. Normally computer software, including source code, object code, and listings of source and object codes, regardless of medium, are not agency records. This does not include the supported data that is processed and produced by such software and that in some instances may be stored with the software.

(3) Personal notes of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

(4) Information stored in a computer for which there is no existing computer program for retrieval of the requested information.

(b) Processing procedures. (1) Log the request and refer the request outside of the FOIA to the proper office for handling according to those policies governing the release and use of the requested materials.

(2) Acknowledge the requester's letter tell the individual where you referred the request, and that the material is not an agency record under the FOIA.

(3) If no alternative release procedures exist, process the request under FOIA, advise the requester that materials are not agency records under the FOIA, and give the requester appeal rights.

§ 806.4 Assigned responsibilities.

(a) The Administrative Assistant to the Secretary of the Air Force (SAF/AA) has the overall responsibility in the Air Force for complying with the Act and makes final decisions on appeals.

(b) The Director of Information Management (SAF/AAI), through the Access Programs Office of the Policy Division, SAF/AAIA, administers those policies and procedures prescribed in this part. SAF/AAIA submits required reports to the Office of the Assistant Secretary of Defense (Public Affairs), and provides guidance and instructions to major commands (MAJCOM) and field operating agencies (FOA).

(c) MAJCOM and FOA commanders implement this part in their commands and agencies.

(d) In addition to the duties specified in paragraph (f) of this section, FOIA managers, at all levels of the Air Force:

(1) Control and process FOIA requests.

(2) Obtain recommended determinations from the office of primary responsibility (OPR) for records.

(3) Assess and collect fees.

(4) Submit required reports.

(e) The OPR for the requested record provides the requested record and helps the disclosure authority to determine whether to release the record.

BILLING CODE 3910-01-M

(f)

RESPONSIBILITIES FOR FOIA ACTIONS

RULE	A	B
	If action is to	**then action is assigned to**
1	obtain coordination on recommended release or denial of records	OPR for records.
2	release records	officials designated by paragraph 17.
3	provide releasable records to FOIA manager	OPR for records.
4	send records to requester	FOIA manager.
5	deny records	officials designated by paragraph 18.
6	invoke administrative extension on initial request	FOIA manager at any level (see note).
7	assess and collect fees	FOIA manager.
8	grant waiver of fees	FOIA manager at any level.
9	deny waiver of fees	FOIA manager at any level (see note in paragraph 18).

NOTE: OPRs must justify extensions with reasons outlined in paragraph 26.

BILLING CODE 3910-01-C

§ 806.5 Freedom of Information Act annual report.

MAJCOM and FOA FOIA managers submit a FOIA annual report on 5¼ inch floppy disk using the FOIA system, reflecting calendar year activity. They send the report by January 10 to SAF/AAIA. The Reports Control Symbol is DD-PA(A)1365. SAF/AAIA submits the report to the Office of the Assistant Secretary of Defense (Public Affairs) Directorate for Freedom of Information and Security Review on DD 2564, Annual Report—Freedom of Information Act.

§ 806.6 Records disposition.

Follow AFR 4-20, volume 2.

Subpart B—Submitting FOIA Requests

§ 806.7 Preparing a FOIA request.

Submit all requests in writing, giving enough information to reasonably identify and locate records. Include a statement in the request letter regarding fees.

§ 806.8 Mailing a FOIA request.

(a) To speed up proceeding, address requests as shown in paragraphs (b) and (c) of this section. Unless otherwise shown in paragraphs (b) and (c) of this section, send FOIA requests to the activity possessing the desired record. Address the letter and envelope to the attention of the FOIA Office. If the letter is sent to multiple addressees, indicate those addressees. This speeds up processing and improves coordination. Because a FOIA request is a personal and not an official government request, do not use official Air Force or other government letterhead or official mail channels when making FOIA requests.

BILLING CODE 3910-01-M

(b)

WHERE TO SEND FOIA REQUESTS

RULE	A If the request is for records	B then address the request to
1	of civilian employees currently employed by the Air Force	the activity or base FOIA office where the civilian works.
2	of civilian employees no longer employed by the Federal service	National Personnel Records Center (Civilian Personnel Records) 111 Winnebago Street St Louis MO 63118-2001.
3	of members and former members of the Air Force, Air Force Reserve, or the Air National Guard	(see table 3).
4	of reports of investigation compiled by the Air Force OSI (see AFR 124-4)	HQ AFOSI/IOC--DIR Bolling AFB DC 20324-1700
5	of personnel security investigations	Defense Investigative Service Assistant for Information. 1900 Half Street, SW Washington DC 20330-1000.
6	when you know the location	the base FOIA office where the record is.
7	when you do not know the location	SAF/AAIS (FOIA) Washington DC 20330-1000

(c)

WHERE TO ADDRESS REQUESTS FOR RECORDS OF MILITARY PERSONNEL (SEE NOTE)

RULE	A	B	C
	If military member status is	and present or past military rank is	then address the request to
1	on extended active duty	a commissioned officer or warrant officer	organization of assignment, if known; otherwise to: HQ AFMPC/DPMDOD Randolph AFB TX 78150-6001.
2		an airman	organization of assignment, if known; otherwise to: HQ AFMPC/DPMDOA Randolph AFB TX 78150-6001.
3	a member of the Air Force Reserve or Air National Guard not on extended active duty	a commissioned officer, warrant officer, or airman	HQ ARPC/IMD Denver CO 80280-5000.
4	retired for temporary disability		HQ AFMPC/DPMDOM Randolph AFB TX 78150-6001.
5	retired with pay	a general officer	HQ AFMPC/DPMDOD Randolph AFB TX 78150-6001.
6		other than a general officer	National Personnel Records Center (Military Personnel Records) 9700 Page Blvd St Louis MO 63132-2001.
7	former member, no longer has an Air Force affiliation	a commissioned officer, warrant officer, or airman	
8	unknown	unknown	HQ AFMPC/DPMDO Randolph AFB TX 78150-6001.

NOTE: Air Force members' and former members' records are in different locations, depending on the member's current status. Send request for such records to the address indicated in this table.

BILLING CODE 3910-01-C

Subpart C—Records Disclosure Policies

§ 806.9 Basic policies on disclosure.

The Department of the Air Force discloses its records to the public, unless they are exempt from disclosure under the FOIA (see § 806.15). Disclosure authorities may make discretionary releases of exempt information. Discretionary releases are generally not appropriate for exemptions 1, 3, 4, 6, and 7(C). A discretionary release to one requester may prevent withholding the same record if someone else requests it. Denial authorities must not withhold a record simply because it might suggest administrative error or inefficiency, or might otherwise embarrass the Air Force or an official of the Air Force.

§ 806.10 Processing requests under FOIA and Privacy Act (PA).

If the requester cites FOIA and PA in the request letter, address both Acts in the response and tell the requester which Act applies to his or her request and why. When denying a request that cites both Acts, and the requested records are in a PA system of records, and not releasable under either Act, cite both the PA exemption and the FOIA exemption in the denial letter. Do not deny any records under the FOIA if they would be available under the PA. See 32 CFR 806b for further guidance on PA requests. To make sure requesters receive the most information, process requests under the :

(a) PA when requesters cite or imply the PA for records on themselves in a PA system of records.

(b) FOIA when requesters cite or imply the PA for records on themselves which are not in a PA system of records.

(c) PA using the time limits of the FOIA when requesters cite or imply the FOIA or both Acts for records on themselves in a PA system of records.

(d) FOIA for agency records when requesters cite or imply the PA, FOIA, or both Acts.

§ 806.11 Other methods of obtaining information.

So the public may have timely information concerning Air Force activities, do not tell a requester to use the FOIA to get a document that is clearly otherwise available to the public. Requesters may obtain records or information under other established procedures (for example, news media representatives through public affairs channels). Answer all requests for information or records promptly, including those not made under the FOIA. See § 806.22(e)(5) on functional requests.

§ 806.12 Records description.

On written request, make available any reasonably described material in the possession and control of the Air Force that qualifies as a record (see § 806.2(o)) and is not exempt from disclosure under § 806.15. Requesters must reasonably specify each record they want. Agencies must make reasonable efforts to find any such reasonably described records. This means searching all activities and locations considered most likely to have the records requested, including staged or retired records. Requesters must give enough data to help find the records, and agencies must conduct a reasonable search. The Air Force is not required to let requesters browse through entire files or large series of records to find one they can identify. If a record is not reasonably described, ask the requester, by letter, for more specific information. When possible, tell the requester what information would assist you in locating the desired records. Do not process the request unless you receive a reply. Do not deny a request for a specific record solely because the record is stored in a computer.

§ 806.13 Creating a record.

There is no obligation to create, compile, or obtain a record from outside the Air Force to fulfill a request. However, you may compile a new record when doing so would result in a more useful response to the requester, or is less burdensome to the agency than providing an existing record and the requester does not object. In these cases, do not charge the requester the cost of creating or compiling such a record unless the fee is equal to or less than the fee you would charge for providing the existing record. With respect to electronic data, the issue of whether you are actually creating or merely extracting records from an existing database is not always readily apparent. Consequently, when responding to FOIA requests for electronic data where creating, programming, or formatting a record is questionable, apply a standard of reasonableness. In other words, if the capability exists to respond to the request, and the effort would be a business as usual approach, then process the request. Do not process the request where the capability to respond does not exist without a significant expenditure of resources, which is not a normal business as usual approach.

§ 806.14 Disclosure policies for certain records.

(a) Specific directive govern disclosure policies for certain specialized types of records. Process FOIA requests for these records under this part and refer to sources listed in paragraph (b) of this section for additional disclosure procedures. However, in cases of denials of records, the only basis for denial is to cite a FOIA exemption. Process FOIA requests from foreign citizens, foreign governments, their representatives, or international commands under this part and coordinate with your foreign disclosure office (see paragraph (c), rule 1, of this section). If the command does not have a foreign disclosure office, refer the FOIA request to SAF/AAIS (FOIA) for SAF/IAD coordination through the MAJCOM FOIA Office. All referrals must be accepted by SAF/AAIS (FOIA) before referring the case. Refer requests from officials of foreign governments that do not invoke the FOIA to your foreign disclosure office and notify the requester. If you have a non-US Government record in your possession and control, coordinate with the originator of the record before release (see § 806.15(d), exemption (4)). The requirement to coordinate with the originator of the record before release includes records originated with foreign governments and such organizations as North Atlantic Treaty Organization (NATO) and North American Aerospace Defense (NORAD). Coordinate all releases of records that originated with a foreign government with the US Department of State through the MAJCOM FOIA Office. Coordinate proposed releases or denials of letters of offer and acceptance (LOA) with SAF/IA through SAF/AAIS (FOIA) (see paragraph (c), rule 5, of this section).

BILLING CODE 3910-01-M

(b)

DISCLOSURE AUTHORITIES AND GOVERNING DIRECTIVES FOR SPECIALIZED RECORDS

RULE	A	B	C
	If the type of record is	then disclosure authority is	and the directive is
1	primary mishap or incident safety investigations (including ground and explosive accidents)	as outlined in AFR 127-4	AFR 127-4
2	Air Force Office of Special Investigations (AFOSI) reports of investigation	as outlined in AFR 124-4	AFR 124-4
3	classified records	the original classifier or office currently responsible for the classification of the subject matter	DoD 5200.1-R AFR 205-1
4	collateral accident or incident investigations	as outlined in AFR 110-14	AFR 110-14
5	Drug and Alcohol Abuse Programs documentation		AFR 30-2
6	inspection reports	as outlined in AFR 123-1	AFR 123-1
7	Inspector General administrative inquiries and investigations	as outlined in AFRs 120-3, 123-2, and 123-11	AFRs 120-3, 123-2, 123-11
8	for use in litigation	the Judge Advocate General or other authority listed in AFR 110-5	AFR 110-5
9	medical records	the Director, Base Medical Services or a designated medical officer	AFR 168-4
10	trial by courts-martial	the Judge Advocate General or other authority listed in AFR 111-1	AFR 111-1
11	audit reports	as outlined in AFR 175-4	AFR 175-4
12	Fraud, Waste, and Abuse records	the Inspector General	AFR 123-2

(c)

SPECIAL HANDLING OF FOIA REQUESTS

RULE	A	B	C
	If the FOIA request is	and	then
1	from a foreign citizen, foreign government, representative of a foreign government, or an international command		process it according to this regulation, and coordinate with your Foreign Disclosure Office.
2	for a record originated by another government agency or Air Force activity	the other agency or activity confirms it originated the record and accepts the action	transfer it and notify the requester (paragraph 23).
3	for potentially newsworthy material or from the news media	is sent directly to the FOIA office	process it according to this regulation, and coordinate with the Public Affairs office.
4	for records retired to a records center or other respository		refer to AFR 12-50, volume I, for retrieval procedures.
5	for letters of offer and acceptance (which applies to foreign military sales data)		refer it to SAF/AAIS (FOIA) thru MAJCOM FOIA office with proposed reply for release or denial, and SAF/IA reviews case.

BILLING CODE 3910-01-C

§ 806.15 FOIA exemptions.

Denial authorities may withhold records or parts of records from public disclosure that fall in one or more of the following nine exemptions. Records exempt under 5 U.S.C. 552(b) include:

(a) *Exemption (1)—Classified records.* Those properly and currently classified in the interest of national defense or foreign policy, as authorized by Executive Order 12356 and implementing DOD and Air Force regulations. To make a proper release determination, review the requested record paragraph by paragraph. Review all unclassified parts before release. They may qualify for withholding under one or more of the other following exemptions. Minimally, review for segregating at the paragraph level. If a classified document is reviewed and declassified, line-through (do not obliterate) the classification markings with a single black line, so the classification markings are still legible, and stamp the document Unclassified. Review material, if appropriate, to determine if it should be classified, even though it was not classified at the time of the request. See AFR 205–1 for guidance on authority and procedures for classifying and declassifying records. Check information received from a foreign government or foreign source to see if it is classified according to AFR 205–1. Use Executive Order 12356 amd AFR 205–1 as classification authorities. Delete the exempt portions or records and disclose the remainder if it would not distort the meaning and you can reasonably assume that a skillful and knowledgeable person could not reconstruct the excised information. Denial letters must include a statement that unauthorized disclosure of such information could reasonably be expected to cause damage to national security and must also cite the Executive Order 12356 as authority for classification. When denying an entire classified record, state in the denial letter that there are no reasonably segregable portions to release. Coordinate with the local information security specialist when invoking this exemption. He or she will review the final response for consistency of classification policy and procedures. Also, apply this exemption when the denial authority determines (1) Disclosure of such information either by itself or in the context of other information could reasonably be expected to cause damage to national security; or (2) The fact of the existence or nonexistence of a record would reveal classified information. Use the refusal to confirm or deny response consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a no record response when a record does not exist, and a refusal to confirm or deny when a record does exist will disclose exempt information. Cite the FOIA exemption in the response when using the Glomar rationale. Coordinate with the MAJCOM or FOA staff judge advocate (SJA) through the MAJCOM FOIA office before using a Glomar response.

(b) *Exemption (2)—Internal personnel rules and practices.* Those containing or constituting rules, regulations, orders, manuals, directives, and instructions relating to internal personnel rules or practices.

(1) If their release to the public would either substantially hinder the effective performance of a significant function of the DoD by risking circumvention of a statute, Air Force regulation or policy (high (b)(2)); or

(2) If such internal agency matters relate to trivial administrative matters of no genuine public interest and the process of releasing such records would constitute an unwarranted administrative burden (low (b)(2)). To use the low (b)(2) exemption, do not search for, review or reproduce the requested records. Otherwise, you may eliminate the administrative burden justification. High (b)(2) examples include:

(i) Operating rules, guidelines, and manuals for investigators, inspectors, auditors, examiners, or classifiers that must remain undisclosed in order for the agency to fulfill a legal requirement or to preclude circumvention, or vulnerability assessments concerning such rules, practices and requirements.

(ii) Examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement or promotion.

(iii) Computer software meeting the standards of a record under this regulation, the release of which would allow circumvention of a statute or DoD rules, regulations, orders, manuals, directives, or instructions. In this situation, examine closely the use of the software to ensure a circumvention possibility exists. Examples for low (b)(2) are rules on use of parking facilities or regulations of lunch hours.

(c) *Exemption (3)—Other statutes.* Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue of withholding or according to defined standards for withholding or referring to particular types of matters we must withhold. When denying records using this exemption, cite both exemption (b)(3) and the specific statute in the response to the requester. When citing certain statutes include the specific section that applies.

(d) *Exemption (4)—Confidential commercial information.* Records containing trade secrets and commercial or financial information submitted by any person or entity outside the Federal Government on a privileged or confidential basis that, if released, (1) is likely to cause substantial competitive harm to the submitter of the information or (2) impair the government's future ability to obtain necessary information. Contact the submitter of such data for views on releasability. At the same time, notify the requester that we must give the submitter of the data the opportunity to comment before the Air Force makes a release determination. Give the submitter a reasonable period of time to object to disclosure with justification (no more than 30 calendar days). If the submitter objects to release, but the Air Force release authority determines that records are releasable, notify the submitter of that decision before releasing the data. Examples of records covered by this exemption include:

(1) Trade secrets. These are commercially valuable plans, formulas, processes, or devices that are used for making, preparing, compounding, or processing of trade commodities, and are the end product of innovation or substantial effort and received in confidence.

(2) Commercial or financial information received in confidence, in connection with loans, bids, contracts, or proposals; and other information received in confidence, or privileged, such as trade secrets, inventions, and discoveries, or other proprietary data.

(3) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(4) Personal statements given in the course of inspections, investigations, or audits, if such statements are received in confidence from the individual and kept in confidence, because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(5) Financial data provided in confidence by private employers for locality wage surveys, used to fix and adjust pay schedules that apply to prevailing wage rate employees in the DoD.

(6) Scientific and manufacturing processes or developments concerning technical or scientific data; or other information submitted with an application for a research grant, or with a report while research is in progress.

(7) Computer software qualifying as a record under this part that is copyrighted under the Copyright Act of 1976 (17 U.S.C. 106), the disclosure of which would have an adverse impact on the potential market value of a copyrighted work.

(8) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, and technical or scientific data developed in part with Federal funds and in part at private expense, where the contractor or subcontractor retains legitimate proprietary interests in such data according to 10 U.S.C. 2302–2321 and DoD Federal Acquisition Regulation Supplement (DFARS), chapter 2 of 48 CFR 227.4. Technical data developed exclusively with Federal funds may be withheld under Exemption 3 if it meets the criteria of 10 U.S.C. 130.

(e) *Exemption (5).—Inter or intra-agency records:*

(1) Intra-agency or interagency memoranda or letters that, according to recognized legal privileges are not routinely released to a party in litigation with the Air Force or DoD. Examples include:

(i) The deliberative process privilege—those portions of records which consist of internal advice, opinions, evaluations, or recommendations, the release of which would reveal the deliberative process of the Air Force or DoD. For example, advice, suggestions, or evaluations prepared for the Air Force by its members, employees, individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups formed to obtain advice and recommendations.

(ii) Those nonfactual portions of Air Force personnel evaluations of contractors and their products.

(iii) Advance information of a speculative, tentative, or evaluative nature, on such matters as proposed plans to procure, lease, or otherwise acquire and dispose of materials, real estate, facilities, or functions, if such information provides undue or unfair competitive advantage of private personal interests or impedes legitimate governmental functions.

Note: Generally, this privilege does not permit withholding factual material. However, you may withhold facts when either the factual material is so inextricably connected to the deliberative material that disclosure of the factual material would necessarily disclose the Air Force's deliberative process, or when the factual material is so inextricably intertwined with the deliberative material that reasonable segregation is impracticable.

(iv) Official reports of inspection, audits, investigations, or surveys on the safety, security, or the internal management, administration, or operation of the Air Force.

(v) The attorney work product privilege—records prepared by an attorney or under an attorney's supervision in contemplation of or preparation for anticipated administrative proceedings or litigation before any federal, state, or military court.

(vi) The attorney-client privilege—confidential communication between an attorney and client. For example, a commander expresses certain concerns in confidence to his or her judge advocate and asks for a legal opinion. The legal opinion and all information expressed by the commander in confidence to the judge advocate would qualify.

Note: Unlike the deliberative process privilege, you may withhold both facts and opinions in attorney work product or privileged communications.

(vii) Trade secrets or other confidential research, development, or commercial information owned by Air Force or DoD, where premature release is likely to affect Air Force or DoD's negotiating position or other commercial interests.

(viii) Computer software qualifying as a record under this part which is deliberative in nature, the disclosure of which would inhibit or chill the decisionmaking process. In this situation, closely examine the use of the software to ensure its deliberative nature.

(ix) Planning, programming, and budgetary information involving the defense planning and resource allocation process.

(2) If any such intra-agency or interagency record or a reasonably segregable portion of such a record would be made available routinely through the discovery process, in the course of litigation with the agency, do not withhold the record from the general public. The discovery process is that process by which litigants get information from each other that is relevant to issues in a trial or hearing. If the information is only made available through the discovery process by special order of the court, then it is exempt from release to the general public. Unless the material is privileged or otherwise exempt, release factual intra-agency or interagency memorandums or letters, or those factual portions you can separate, if you would have to release them on a routine basis through the discovery process.

(3) Generally, do not withhold from a requester a direction or order from a superior to a subordinate, though contained in an internal communication, if it forms policy guidance or a decision, as distinguished from a discussion of preliminary or other matters that would compromise the decisionmaking process.

(4) Consult with your SJA to determine whether Exemption 5 material would be routinely made available through the discovery process.

(f) *Exemption (6)—Invasion of personal privacy.* Personnel and medical files, and similar personal information in other files that, if disclosed to a member of the public, would result in a clearly unwarranted invasion of personal privacy. To determine whether releasing information would result in a clearly unwarranted invasion of personal privacy, balance the degree to which satisfying the request aids the public in understanding how the Air Force functions (public interest) against the sensitivity of the privacy interest being threatened. Use the exemption only when the privacy interest exceeds the public interest. Do not use this exemption in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy interest of the deceased person's family. Withhold personnel, medical, or similar files from subjects of those records, or their designated legal representative, only according to 5 U.S.C. 552a, the Privacy Act of 1974 (part 806b of this chapter). Delete the identity of others in a record, where disclosure would result in a clearly unwarranted invasion of their privacy, even when providing it to the subject of the record. A Glomar response may be used under this exemption when acknowledging the existence of records would disclose a record that if released would constitute a clearly unwarranted invasion of personal privacy. Use the refusal to confirm or deny response consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a no record response when a record does not exist, and a refusal to confirm or deny when a record does exist will disclose exempt information. Cite the FOIA exemption in the response when using the Glomar rationale. Coordinate with the MAJCOM or FOA SJA through the MAJCOM FOIA office before using a

Glomar response. Examples of exemption (6) information include:

(1) Social Security numbers.

(2) Home addresses.

(3) Names and duty addresses of personnel serving overseas, or in classified, sensitive, or routinely deployable units.

(i) Routinely deployable units are those units that normally deploy from permanent home station on a periodic or rotating basis to meet peacetime operational requirements, or to participate in scheduled training exercises, which require deployment outside of the United States or US territories on a routine basis. Units normally qualifying under this definition that are based in the United States for an extended period of time, such as those undergoing extensive training or maintenance activities, would not qualify for the duration of that period. Units designated for deployment on contingency plans not yet executed and units that participate in exercises outside the United States or US territories on an infrequent basis (e.g. annual or semiannual) would not fall within this definition. However, units that are alerted for deployment outside the United States or US territories during actual execution of a contingency plan or in support of a crisis operation would qualify. Due to the method by which the Air Force deploys units, it is not easy to determine when a unit that has part of its personnel deployed becomes eligible for denial under the routinely deployable definition. The Air Force may consider a unit deployed on a routine basis or deployed fully overseas when 30 percent of the unit has been either alerted or actually deployed. In this context, alerted means that a unit has received an official written warning of an impending operational mission outside the United States or US territories.

(ii) Sensitive units are those units primarily involved in training for the conduct of special activities or classified missions, including units involved in collecting, handling, disposing, or storing classified information and materials. Also included are units engaged in training or advising foreign personnel. Examples of such units would include nuclear power training units, special operation units, security group commands, weapons stations, and communications stations.

(iii) The War and Mobilization Plans Division, Directorate of Operations, Deputy Chief of Staff, Plans and Operations (HQ USAF/XOXWX) compiles the list of Air Force units qualifying for exemption under the routinely deployable and sensitive definitions. Every 6 months, HQ USAF/XOXWX will review and update the listing. The Air Force Access Programs Office will send the list of all MAJCOM and FOA FOIA managers, when updated, to use when responding to requests for lists of names and duty addresses.

(4) Records compiled to evaluate or judge the suitability of candidates for employment (including membership in the armed forces), and the eligibility of individuals (civilian, military or industrial) for security clearances or for access to particularly sensitive classified information.

(5) Files containing reports, records, and other material pertaining to personnel matters, where there is a possibility of, or record of, administrative action, including disciplinary action.

(g) *Exemption (7)—Investigative records:*

(1) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings.

(ii) Would deprive a person of the right to a fair trial or an impartial adjudication.

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy.

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution that furnishes information on a confidential basis.

(v) Could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

(vi) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

(vii) Could reasonably be expected to endanger the life or physical safety of any individual.

(2) The right of individual litigants to investigative records currently available by law is not diminished by this exemption. When the subject of an investigative record is the requester of the record, see part 806b of this chapter.

(3) This exemption also applies when the fact of the existence or nonexistence of a responsive record would reveal personal information, and the public interest in disclosure is not enough to outweigh the privacy interest. Use the refusal to confirm or deny response consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a no record response when a record does not exist, and a refusal to confirm or deny when a record does exist will disclose exempt information. Cite the FOIA exemption in the response when using the Glomar rationale. Coordinate with the MAJCOM or FOA SJA through the MAJCOM FOIA office before using a Glomar response.

(h) *Exemption (8).—Financial institutions.* Those records contained in or related to examination, operation, or condition reports prepared by, on the behalf of, or for the use of, an agency responsible for regulating or supervising financial institutions.

(i) *Exemption (9).—Wells.* Those that have geological and geophysical information and data, including maps, concerning wells.

(j) *FOIA exclusions.* Under two limited situations, requests for law enforcement records are not subject to disclosure under FOIA or this part. In such cases, the denial procedures otherwise specified in this part do not apply; instead, state no records were found since they are not considered records under the FOIA. Coordinate with your SJA on such cases before responding to the requester. When communicating with the requester, do not provide the statutory citation to the exclusion or state the fact that you are relying on an exclusion. The two limited FOIA exclusions are:

(1) Requests for law enforcement records where the investigation involves a possible violation of criminal law, there is reason to believe that the subject of the investigation is not aware of it, and disclosure of the existence of the record could reasonably interfere with enforcement proceedings.

(2) Requests for informant records maintained by a criminal law enforcement agency under the informant's name or personal identifier made by a third party using the informant's name or personal identifier, but only when the informant's status as an informant has not been officially confirmed.

§ 806.16 Partial denial.

When withholding any part of a requested record, it is a partial denial. Only denial authorities as discussed in § 806.18 may withhold information. Delete exempt portions of a record and disclose the remaining reasonably segregable parts to the requester when it

reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When releasing parts of a record, specifically state in your response that you are providing all reasonably segregable portions of the requested record. It is Air Force policy to clearly identify to requesters where information has been withheld. When you deny parts of a record, excise records by eliminating the exempt information. A good method to use is to black out the exempt information or bracket the blank space (if the space is white) where the exempt information was removed. If using the blackout method, make sure it is sufficiently blackened to prevent disclosure of denied information. The best way is to cut out the information from a copy of the record and reproduce the pages. Justify use of each exemption in writing and cite the FOIA exemption. Describe the deleted material as stated in § 806.20(c).

Subpart D—Disclosure and Denial Authorities

§ 806.17 Disclosure authorities.

Except as specified in those Air Force parts cited in § 806.14(b), normally the authority to disclose records is at the division level at HQ USAF, the directorate or comparable level at MAJCOM and FOA headquarters, and at group comparable level. Individuals at those levels may delegate disclosure authority to a lower level. Ensure the level is high enough so a responsible authority makes the releases according to the policy outlined here.

§ 806.18. Denial authorities.

(a) Do not delegate denial authority to levels lower than those shown below.

(1) Deputy chiefs of staff and chiefs of comparable offices or higher level at HQ USAF.

(2) MAJCOM and FOA commanders.

(b) Note that these officials may designate one additional official to act as a denial authority. Send SAF/AAIA a letter with the position titles of denial authorities. In the letter to SAF/AAIA do not include names of individuals holding positions with denial authority since the authority to deny records is vested in the position, not with the person. Only the Administrative Assistant to the Secretary of the Air Force has the authority to approve a request for more than one designee. Send requests for more than one designee, with justification, to SAF/AAIA.

Note: FOIA managers may deny initial requests for fee waivers. However, coordinate with the MAJCOM or FOA FOIA manager by phone on all denials of fee waiver requests below MAJCOM and FOA level.

§ 806.19 Responsibilities of disclosure authorities.

Officials designated as disclosure authorities (see § 806.17):

(a) Determine, within statutory time limits (see § 806.2(q)), whether to disclose records. Ensure the OPR, if necessary, requests an administrative extension from the FOIA manager (see § 806.26).

(b) Make sure the OPR coordinates proposed partial and complete denials with the SJA and FOIA offices.

(c) Make releasable records available to the FOIA office, in the number of copies specified by that office.

§ 806.20 Responsibilities of initial denial authorities.

Officials designated as denial authorities (see § 806.18):

(a) Make a final determination on denials, within statutory time limits.

(b) Obtain SJA coordination before making a final determination.

(c) Tell requesters the nature of those records or parts of records denied, the reason for denial, and the exemption that supports the denial.

(d) Give the requester appeal rights and procedures.

(e) Make sure the OPR for the records gives the FOIA office a final package for processing to the requester. If required, the package should include a redacted copy of the record (denied parts removed), ready to send to the requester, and a copy of the record with the denied parts bracketed.

Subpart E—Processing FOIA Requests

§ 806.21 Records management office responsibilities.

Usually within each activity, the records management office is responsible for processing FOIA requests. As such, this office is the focal point for:

(a) Receiving and processing FOIA requests.

(b) Providing facilities and services (a reading room) for inspecting, copying, and furnishing copies of records to requesters.

(c) Assessing and collecting fees, if proper.

(d) Making available to the general public, for reference, master publication libraries established under AFR 4–61.

(e) Establishing coordination and local working agreements between administrative reference libraries and other functional areas that maintain technical, professional, and specialized types of documentation.

(f) Submitting required reports.

(g) Providing education and training on the FOIA Program.

(h) Reviewing publications before final printing to insure compliance with this part.

(i) Conducting periodic program reviews to insure compliance with the Act and established policies.

§ 806.22 Processing FOIA requests.

All FOIA offices must use the FOIA system to track and manage FOIA requests. AFM 4–196 is the FOIA system end users manual and gives information necessary to install and operate the system. When a request for records is received under the FOIA (see paragraph (n) of this section), the FOIA manager:

(a) Records the date and time of receipt, and assigns a case number and suspense date. Establishes a first-in, first-out system after receiving more than 10 FOIA requests, and processes the requests in the order of receipt. Considers a request received when the FOIA office responsible for processing the request receives it; and when the requester:

(1) When asked, states a willingness to pay fees appropriate for his or her category.

(2) Has satisfied all past-due obligations.

(3) Reasonably describes the records requested.

Does not process a FOIA request if the requester has not addressed fees and it appears that the request will involve chargeable fees in excess of $15. Writes the requester and asks for a fee declaration appropriate for his or her category (see § 806.24). Advises the requester of your category determination and the chargeable fees for that category. (The requester may appeal category determinations. Normal appeal procedures apply. See § 806.37) If the requester asks for a fee waiver, addresses that first before processing the request. Requests additional justification, if necessary, to make a proper decision. Does not consider this kind of notification a denial under § 806.2(b).

(b) Attaches DD Form 2086, Record of Freedom of Information (FOI) Processing Cost, or DD 2086–1, Record of Freedom of Information (FOI) Processing Cost for Technical Data, to each request. The OPR must complete and return this form to the FOIA office. This gives cost data for fee charges, if any, and is used in preparing the FOIA annual report.

(c) Acknowledges receipt of a request if 10 workdays or more have elapsed between the date on the request (or the

envelope postmark, whichever is later) and the data received, or where unusual problems are obvious.

(d) Tells the requester if the record is not sufficiently described and asks for further description. Offers assistance to the requester, when practicable, in identifying the records sought. Tells the requester what kind of information he or she needs to furnish to reduce search efforts.

(e) Sends the request to the OPR to locate the record and to determine if it is releasable or not.

(1) The OPR is the activity that has the responsibility for the information. If several OPRs have functional responsibility for the information, the one responsible for the majority of information contained in the document is designated the OPR.

(2) The OPR is responsible for obtaining coordination with the appropriate offices of collateral responsibility (OCR) internal and external to the Air Force, consolidating inputs, and making a final Air Force release determination. If coordination external to the Air Force is required, the OPR will forward the case to the MAJCOM or FOA FOIA office for referral to the outside activity FOI office for review and return.

(3) When the outside agency completes its determination, it will return the case to the Air Force OPR for a final release determination through the MAJCOM or FOA FOIA office.

(4) The OPR assists his or her designated FOIA disclosure and denial officials in making a release determination and acting as the declassification authority.

(5) The OPR or functional manager answers each functional request. And when doing so, provides the same records as if the request were a FOIA request. If denying part or all of a functional request, the OPR processes it as a FOIA request, through the FOIA office, with exemptions and appeal procedures.

(f) Sends classified records for which he or she cannot identify an OPR or functional equivalent to SAF/AAIS, through the MAJCOM or FOA FOIA office, for HQ USAF/SP review. In these cases, calls SAF/AAIS first and gets its agreement to accept the referral.

(g) Tells the requester, in writing, of the determination to release or deny records within 10 workdays after official receipt of the request.

(1) Denial letters and no records determinations must include the appropriate appeal paragraph (the appeal address will vary depending on what activity denied the record). In addition, denial letters will also include the reason for the denial (from § 806.15) and the statutory exemption citation.

(2) When replying to FOIA requests for lists of names and duty addresses, informs requesters at the earliest possible time of mass mailing restrictions outlined in AFR 4–50, "Official Mail, Small Parcel and Distribution Management Regulation," to try to prevent potential mailers from needlessly preparing materials that will not be delivered.

(h) Writes the requester with notification of time extension, if he or she cannot meet the 10-workday time limit. The time extension notification letter must state the reason for the delay (see § 806.26 for authorized reasons) and the date when the requester may expect a determination to release or deny. The date must not extend beyond 20 workdays after receipt of the request.

(i) Coordinates with the public affairs office if the request is for the records that have potentially newsworthy material, or if the request is from the news media.

(j) Takes actions outlined in AFR 12–50, volume I. Takes these actions if records are retired to a records center (or other repository).

(k) Consults with higher headquarters or other activities that have an interest in the material, or asks the OPR to do this.

(l) If the records are releasable, send them to the requester with a letter requesting fee remittance. (See § 806.31 on Fee Restrictions.) The time limits of the Act begin only after the FOIA manager receives a statement from the requester that he or she is willing to pay appropriate fees, the FOIA manager determines there are no charges involved, there is no disagreement on the category determination, or the requester pays fees (if appropriate).

(m) If the disclosure authority is not the authorized denial authority (see § 806.18), sends the proposed denial, through the MAJCOM or FOA FOIA Office, to the denial authority for a decision. The proposed denial package must include the original request, a copy of the requested records, a written recommendation from the OPR and the SJA, the exemption cited, and the reason for denial.

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(n)

HOW TO PROCESS FOIA REQUESTS AND RELATED ACTIONS

RULE	A If the action is a	B then the action is the responsibility of the	C and to complete the action
1	FOIA request received from general public (anyone acting as a private citizen)	FOIA office	record date and time received; assign case number and suspense date; locate OPR for records; and staff to OPR and indicate suspense date.
2	FOIA request received by an office other than the FOIA office	receiving office	immediately send the request to the FOIA office for processing.
		FOIA office	upon receipt of request, assign case number and suspense date.
3	FOIA request not received by the FOIA office within 10 days of request date		notify requester, in writing, of receipt date in the FOIA office.
4	time extension	OPR for records	immediately tell the FOIA office, by telephone, and give reason for extension.
		FOIA office	write requester giving reason for extension and the date final determination will be sent. (See note 1)
5	FOIA request and does not address fees		notify requester of category determination and related assessable fees.
6	FOIA request for fee waiver		address fee waiver before processing the request.
7	FOIA request and specifies a dollar amount	OPR for records	tell the FOIA office, before further processing, when you expect charges to exceed specified amount.
8	FOIA request not specific enough	OPR for records	tell the FOIA office why it is not specific enough and explain what further information requester needs to furnish.
		FOIA office	tell requester, in writing, and explain what further information is needed to process the request.
9	FOIA request recommended for denial or partial denial	OPR for records	according to MAJCOM or FOA supplement, send a denial letter to the requester or to the FOIA office recommending denial and include the reason for the denial. (See note 2)

NOTES:

1. Include total number, by reason, in the Annual Report.
2. SJA must coordinate on letter before the denial authority signs it.

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§ 806.23 How FOIA managers handle referrals.

(a) Normally, FOIA managers refer requests for records to another FOIA office when they:

(1) Receive a misaddressed request, or a request for records belonging to another activity. An example of a misaddressed request is AFMPC receiving a request for a copy of a SAC history.

(2) Have a no records response and another activity confirms it has, or is likely to have, the requested records.

(3) Surface records in response to a request that originated with another activity.

(4) Release or deny records in response to a request and the OPR indicates other activities may also have responsive records.

(b) Requests for unaltered publications and processed documents, such as maps, charts, regulations, and manuals that are available to the public through an established distribution system with or without charge are usually answered by referring FOIA requesters to the proper sales outlet or other appropriate sources and FOIA procedures normally do not apply. Normally, documents disclosed to the public by publication in the **Federal Register** also require no processing under the FOIA. Refer requesters to the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, for current Air Force standard numbered (departmental) publications. These procedures do not apply to superseded, obsolete, rescinded, classified, For Official Use Only (FOUO), limited (L), or X distribution Air Force publications. Process FOIA requests for these publications through normal FOIA channels.

(c) FOIA managers send requests direct to the FOIA office of other government agencies and other Air Force activities, after confirming that they originated the record. They:

(1) Confirm by calling the FOIA office for concurrence before referring the request.

(2) Refers a request for a classified record to an agency outside the DoD if the record or a portion of it originated in, or if the classification is derived from, the outside agency. Consult the outside agency before referral.

(3) Usually, tell the requester of the referral, identify the record referred consistent with security requirements, and tell the requester to expect an answer from the agency or activity receiving the referral.

(4) On requests that would involve many referrals, tell the requester where to address the request, rather than referring it.

(d) In handling exceptions to the policy in paragraph (c) of this section, FOIA managers:

(1) Do not send referrals to the National Security Council (NSC) or the White House. If the request is for records that originated with these agencies, they tell the requester to write them directly. However, if the requester insists that the Air Force respond to the request, they will then process it.

(2) Send Air Force records in which the NSC or White House has a concurrent reviewing interest, or NSC and White House records discovered in Air Force files, to OASD(PA)DFOISR, Washington, DC 20301 for coordination and return to the FOIA manager.

(3) Know that the General Accounting Office (GAO) is outside the executive Branch and so not subject to the FOIA. However, if the FOIA manager receives a FOIA request, either direct from the public or referred from GAO, for GAO documents that contain Air Force or DoD information, they process the request under FOIA.

§ 806.24 Categorizing requesters for fee assessment.

So that the Air Force is as responsive as possible to FOIA requests while minimizing unwarranted cots to the taxpayer, FOIA managers must adhere to the following procedures:

(a) Analyze each request to determine the category of the requester. See § 806.29 for a complete definition of each category. Requesters fall into one of three categories, which are listed in paragraphs (b) (1) through (3) of this section. If the determination regarding the category of the requester is different from that claimed by requester, ask the individual to provide additional justification to warrant the category claimed, and tell the requester you will not initiate a search for responsive records until you have reached an agreement on the category. If you do not receive further category justification from the requester within a reasonable period of time, normally 30 calendar days, make a final category determination and notify the requester of your decision, including normal administrative appeal rights on the category determination.

(b) Tell the requester that you will not initiate a search for records until he or she has indicated a willingness to pay assessable costs appropriate for the category determined. More specifically, requesters must submit a fee declaration appropriate for the following categories:

(1) Category 1. Commercial. Requesters must indicate a willingness to pay all search, review, and duplication costs.

(2) Category 2. Educational or noncommercial scientific institution or news media. Requesters must indicate a willingness to pay duplication charger sin excess of 100 pages, if they desire more than 100 pages.

(3) Category 3. Others. Requesters must indicate a willingness to pay assessable search costs if the request requires more than 2 hours of search, and duplication costs if they desire more than 100 pages of records.

(c) If requesters do not agree to the above conditions, tell them you cannot process their request until they indicate a willingness to pay the assessable costs.

(d) Provide an estimate of assessable fees if the requester desires one. Requesters are entitled to estimates before committing to a willingness to pay fees. Do not charge an amount in excess of the estimate or the amount agreed to by the requester, unless the requester first agrees to paying the excess.

§ 806.25 Host-tenant relationship.

Tenant units should process all FOIA requests according to parent command procedures.

§ 806.26 Notice of administrative extension.

In unusual circumstances, FOIA managers may authorize an administrative extension of the 10-day-time limit for processing a request. In doing so, they send a written notice to the requester within the initial 10 workdays, giving the reason for the extension and the date when they expect to send a notice of determination. The notice cannot give a date extending beyond an additional 10 workdays. Using the FOIA system, FOIA managers will record the total number of extensions taken, by reason. The FOIA system will compute those figures and include the totals in the annual FOIA Report. Unusual circumstances that my justify delay and that are allowed by law are:

(a) All or part of the requested records are at places other than the installation processing the request.

(b) The request requires the collection and evaluation of a substantial number of records.

(c) There is a need to consult with other Air Force activities or other agencies, to determine if all or part of requested records are exempt from release, or are releasable.

§ 806.27 Expedited handling required.

The Air Force gives priority handling, at each echelon, for any request for records from a member of the public. All Air Force personnel must make every effort to help requesters direct FOIA requests for records to proper authorities and not to create administrative obstacles. Specifically if personnel receive an improperly directed FOIA request for records, they will:

(a) Notify the proper FOIA office at once and asked for instructions on how to forward the request for processing.

(b) Give this the highest priority, because the disclosure or denial authority must make the determination within statutory time limits.

Subpart F—Fee Assessment, Categories, Aggregations, Restrictions, Waivers, and Rates

§ 806.28 Fee assessment.

FOIA fees are limited to standard charges for direct document search, review (only in the case of commercial requesters), and duplication (see paragraphs (c) through (e) of this section). Do not use fees to discourage requesters.

(a) Direct costs are those expenditures an activity actually makes in searching for, reviewing (in the case of commercial requesters), and duplicating documents to respond to a FOIA request.

(b) Assessable costs are direct costs after deductions mandated by fee restrictions (see § 806.31).

(c) Search includes all time spent looking for material responsive to a request. Personnel must perform searches in the most efficient and least expensive manner to minimize costs for both the Air Force and the requester. Search efforts must be thorough, which means conducting searches of all locations and activities considered most likely to have the requested records. Searches can include retired or staged records. Time spent reviewing documents to determine whether to apply one or more of the statutory exemptions is not search time, but review time.

(d) Review refers to the process of examining documents located in response to a request to determine if one or more of the statutory exemptions permits withholding. It also includes any excising if necessary. Review does not include time spent resolving general legal or policy issues on applying exemptions. FOIA managers may only assess commercial requesters charges for initial review. This would not include reviews at the appeal stage for exemptions already applied, but can include review to apply a new exemption not previously cited.

(e) Duplication refers to the process of making a copy of the requested document. Copies may take the form of paper copy, microfiche, audiovisual, or machine readable documentation (e.g., magnetic tape or disk), among others. FOIA managers must make every effort to ensure the copy provided is in a reasonably usable form. If it is not possible to provide a usable or readable copy, they must notify the requester that the copy is the best available and that they will make the master copy available for review by appointment. For duplication of computer tapes and audiovisual material, they will charge the actual cost, including the operator's time.

(f) FOIA managers may require advance payment of assessable fees before beginning or continuing work on a request only when:

(1) The requester has previously failed to pay fees in a timely fashion (usually 30 calendar days); or,

(2) The assessable fees or estimate will exceed $250, unless the requester has a history of prompt payments. Where the requester has a history of prompt payments and chargeable costs will exceed $250, notify the requester of the likely cost and obtain assurance of full payment.

(g) FOIA managers may require payment of assessable fees after processing a request but before forwarding documents when:

(1) There is no payment history regarding the requester, or

(2) The requester previously failed to pay fees in a timely fashion (normally 30 calendar days). However, when the requester has a history of prompt payment, the FOIA manager send the records and request payment simultaneously.

(h) Where the requester previously failed to pay fees in a timely fashion, FOIA managers may request payment of the full amount owed, plus any applicable interest, for the previous FOIA request (or show proof of payment) and request the full assessable or estimated fee in advance for the new or pending request before taking any action. FOIA managers should consult 31 U.S.C. 3717 for interest rates and coordinate with their accounting and finance office.

(i) FOIA managers may charge for search time even if that search fails to locate records responsive to the request, or if the records located are exempt from disclosure. When estimating search charges will exceed $25, notify the requester of the estimated fees, unless he or she has indicated in advance willingness to pay fees as high as those anticipated. Offer the requester the opportunity to reformulate the request to meet their needs at a lower cost.

§ 806.29 Categories of requesters.

(a) Category 1—Commercial requesters. Limit fees to reasonable standard charges for document search, review, and duplication when records are requested for commercial use.

(1) The term commercial use request refers to a request from, or on behalf of, one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person being represented. In deciding whether a requester properly belongs in this category, determine the use to which a requester will put the documents requested. When there is reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, seek additional clarification before assigning the request to a specific category.

(2) When you receive a request for documents for commercial use, assess charges to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters (unlike other requesters) are not entitled to 2 hours of free search time, nor 100 free pages of duplication. Moreover commercial requesters are not normally entitled to a waiver or reduction of fees based on an assertion that disclosure is in the public interest. Because use is the exclusive determining criterion, it is possible to envision a commercial enterprise making a request that is not for commercial use. It is also possible that a nonprofit organization could make a request that is for commercial use. Address these situations on a case-by-case basis.

(b) Category 2—(1) Educational institution requesters. Limit fees to only reasonable standard charges for document duplication (excluding charges for the first 100 pages), when an educational institution makes the request for the purpose of scholarly research. The term educational institution refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(2) Noncommercial scientific institution requesters Limit fees to reasonable standard charges for

document duplication (excluding the first 100 pages) when a noncommercial scientific institution whose purpose is scientific research makes the request. The term noncommercial scientific institution refers to an institution that is not operated on a commercial basis and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

Note: To be eligible for inclusion in the subcategories in paragraphs (b) (1) and (2) of this section, requesters must show they are making the request under the auspices of a qualifying institution and that they are not seeking the records for commercial use, but in furtherance of scholarly (from an educational institution) or scientific research (from a noncommercial scientific research institution).

(3) Representatives of the news media. Limit fees to only reasonable standard charges for document duplication, when appropriate, (excluding charges for the first 100 pages) when the request is from a representative of the news media.

(i) The term representative of the news media refers to any person actively gathering news for any entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events or of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public. These examples are not all inclusive. Moreover, include other methods of news delivery as they evolve (e.g., electronic dissemination of newspapers through telecommunications services). In the case of freelance journalists, regard them as working for a news organization if they can demonstrate a solid basis for expecting publication through a news organization, even though not actually employed by it. A publication contract is the clearest proof; however, a requester's past publication record may also constitute sufficient evidence of an expectation of publication.

(ii) To be eligible for inclusion in this category, a requester must meet the news media criteria, and the request must not be for commercial use. A request for records supporting the news dissemination function of the requester is not a commercial use request. For example, you can presume that a request by a newspaper for a report of investigation of public interest is a request from a representative of the news media eligible for inclusion in this category, and it receives the records for the cost of reproduction alone, (excluding charges for the first 100 pages) unless waived.

(c) Category 3. All other requesters. When appropriate, charge requesters who do not fit into either of the other two categories fees to recover the full direct cost of searching for and duplicating records except for the first 2 hours of search time and the first 100 pages of duplication, which is furnished free of charge. Treat requests from subjects of records about themselves that are in a PA system of records under the fee provisions of the Privacy Act of 1974, which permit fees only for duplication. This category of requester, and others, may qualify for a waiver or reduction of fees if it is in the public interest as defined in § 806.32(d).

§ 806.30 Aggregating requests.

A requester may attempt to file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. Where there is a reasonable belief that a requester or, on rare occasions, a group of requesters acting together, are attempting to break a request down into a series of requests for the purpose of evading assessment of fees, the FOIA manager may aggregate any such requests and charge accordingly. Before aggregating any requests, be sure to have solid evidence that avoidance of fees is the prime purpose. Do not aggregate multiple requests on unrelated subjects from one requester. Contact SAF/AAIA before taking any action.

§ 806.31 Fee restrictions.

Do not charge educational or noncommercial scientific institutions or news media requesters (Category 2) search fees or for the first 100 pages of duplication. Do not charge other requesters (Category 3) for the first 2 hours of search time and the first 100 pages of duplication. If after deducting the first 2 hours of search time and the first 100 pages of duplication, the cost is $15 or less, do not charge the requester. For example, in a request that involved 2 hours and 10 minutes of search time, and resulted in 105 pages of releasable documents, chargeable costs would include only the 10 minutes of search time and 5 pages of reproduction. Since the total chargeable costs are less than $15, you would waive fees.

(a) When a FOIA request from an other Category 3 requester involves search at more than 1 hourly rate, waive the first 2 hours of search with the highest hourly rate. Requesters receive the first 2 hours search (Category 3 requesters only) and the first 100 pages of duplication (Categories 2 and 3) free only once per request. If you refer the request to another FOI office for further action after completing your part, notify that FOI office of the search time you expended and reproduced pages furnished to the requester.

(b) For computer searches, determine the first 2 free hours against the salary scale of the person operating the computer.

(c) For the purposes of these restrictions, the word pages refers to paper copies of a standard size, normally 8½ by 11 or 11 × 14. Requesters would not receive 100 microfiche or 100 computer disks. However, a microfiche containing the equivalent of 100 pages or 100 pages of computer printout may meet the terms of the restriction.

§ 806.32 Fee waivers.

Furnish documents without charge under any one of the following circumstances:

(a) When direct costs for a FOIA request total $15 or less, waive fees for all requesters, regardless of category.

(b) A record is voluntarily created to save an otherwise burdensome effort in providing voluminous amounts of available records, including other information not requested.

(c) A previous denial is reversed in whole or in part, and assessable costs are not substantial (e.g., $15–$30).

(d) Disclosing the information is likely to contribute significantly to public understanding of the operations or activities of the DoD and is not primarily in the commercial interest of the requester. This final waiver standard establishes two basic requirements. Both must be satisfied before you waive or reduce fees. Use the following six factors. Begin with the first four factors to make the public interest determination and then, using the two remaining factors, determine whether disclosure of the information * * * is not primarily in the commercial interest of the requester.

Part 1 Disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.

(1) Subject of the request. Analyze whether the subject matter of the request involves issues that will significantly contribute to the public understanding of the operations or activities of the DoD. Requests for

records in the possession of DoD that were originated by nongovernment organizations and are sought for their intrinsic content rather than informative value will likely not contribute to public understanding of the operations or activities of the DoD. Press clippings, magazine articles, or records forwarding a particular opinion or concern from a member of the public regarding a DoD activity are examples of such records. Disclosures of records of considerable age may or may not bear directly on the current activities of the DoD. Do not use the age of a record as the sole criterion for denying relative significance under this factor. For example, you could have an informative issue concerning the current activities of the DoD based on historical records. Review these kinds of requests closely consistent with the requester's stated purpose for desiring the records and the potential for public understanding of the operations and activities of the DoD.

(2) The informative value of the information you plan to disclose. This factor requires a close analysis of the substantive contents of a record, or portion of the record, to determine whether disclosure is meaningful, and will inform the public on the operations or activities of the DoD. While the subject of a request may contain information that concerns operations or activities of the DoD, it may not always hold great potential for contributing to a meaningful understanding of these operations or activities. An example is a heavily redacted record, the balance of which may contain only random words, fragmented sentences, or paragraph headings. Another example is information already known to be in the public domain.

(3) The contribution to an understanding of the subject by the general public likely to result from disclosure. The key element in determining the applicability of this factor is whether disclosure will inform, or have the potential to inform the public, rather than simply the individual requester or a small segment of interested persons. The identity of the requester is essential in this situation to determine whether he or she has the capability and intention to disseminate the information to the public. Assertions of plans to author a book, researching a particular subject, doing doctoral dissertation work, or indigency are insufficient without demonstrating the capacity to further disclose the information in a manner that will inform the general public. You may ask requesters to describe their qualifications, the nature of their research, the purpose of the requested information, and how they will disseminate it to the public.

(4) The significance of the contribution to public understanding. In applying this factor, components must balance the relative significance or impact of the disclosure against the current level of public knowledge or understanding which exists before the disclosure. Disclosure of records on a current subject of wide public interest should contribute previously unknown facts that will enhance public knowledge. It should not basically duplicate what the general public already knows. A decision regarding significance requires objective judgment, rather than subjective determination. Take care to determine whether disclosure will likely lead to a significant public understanding of the issue. Do not make value judgments as to whether the information is important enough to make public.

Part II—Disclosure of the information is not primarily in the commercial interest of the requester.

(5) The existence and magnitude of a commercial interest. If you determine the requester has a commercial interest, you should address the magnitude of that interest to determine if the commercial interest is primary, as opposed to any secondary personal or noncommercial interest. In addition to profit-making organizations, individual persons or other organizations may have a commercial interest in obtaining certain records. Where it is difficult to determine whether the request is of a commercial nature, the requester's identity and circumstances of the request may help. In these situations, you may write the requester and ask for additional details.

(6) The primary interest in disclosure. Once you have determined the requester's commercial interest, you then must determine if the disclosure is primarily in that interest. You may determine that the requester's commercial interests are primary only if the requester's commercial benefit clearly overrides any personal or nonprofit interest. This requires a balancing test between the commercial interest of the request against any benefit the public may gain as a result of that disclosure. You should waive or reduce fees when the public interest is served above and beyond that of the requester's commercial interest. Conversely, if the relative commercial interest of the requester is greater than the public interest, you should not waive or reduce fees even if a significant public interest exists. As examples, news media organizations have a commercial interest as business organizations; however, you can ordinarily presume their primary interest is their role of disseminating news to the general public. Any commercial interest becomes secondary to the primary interest in serving the public. Scholars writing books or engaged in other forms of academic research, may realize a commercial benefit, either directly, or indirectly (through the institution they represent); however, normally such pursuits are primarily undertaken for educational purposes. In these cases you would not usually assess fees. Conversely, you can normally presume a primarily commercial interest for data brokers or others who merely compile government information for marketing.

Note: Make each fee waiver decision on a case-by-case basis using the information provided in each request. When an element of doubt exists as to whether to charge or waive the fee, and you cannot resolve it, rule in favor of the requester.

§ 806.33 Transferring fees collected to accounting and finance offices.

The Treasurer of the United States has two accounts for FOIA receipts:

(a) Receipt Account 3210 Sales of Publications and Reproductions, Freedom of Information Act. Use this account when depositing funds received from providing existing publications and forms that meet the Receipt Account Series description found in Federal Account Symbols and Titles.

(b) Receipt Account 3210 Fees and Other Charges for Services, Freedom of Information Act. Use this account to deposit fees for search, duplication, and review (for commercial requesters) to satisfy requests you cannot fill with existing publications or forms.

Add your appropriate disbursing office prefix to the above account numbers. Use these accounts for depositing all FOIA receipts, except those for industrially funded and nonappropriated funded activities. Deposit industrially funded and nonappropriated funded activity FOIA receipts to the applicable fund.

§ 806.34 Fee rates.

These fee rates apply only to FOIA requests. Part 813 of this title contains the schedule of fees for non-FOIA services. Refer to part 806b of this title for guidance on fees for PA requests.

(a)

FEE RATES FOR SEARCH

RULE	A If the manual search type is	B then the grade is	C and the hourly rate is
1	Clerical	E9 and GS-8 and below	$12
2	Professional	01-06 and GS-9-GS/GM-15	$25
3	Executive	07 and GS-16/ES 1, and above	$45

(b) Computer search. Computer search is based on direct cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. Include as part of the computer search the salary scale (equal to hourly rates above) for the computer operator or programmer who determined how to conduct and subsequently executed the search.

(c)

FEE RATES FOR DUPLICATION

RULE	A If the type is	B then the cost per page is
1	preprinted material	$.02
2	office copy	.15
3	microfiche	.25
4	computer copies (tapes or printouts)	see note

NOTE: Actual cost of duplicating the tape or printout (includes operator's time and cost of tape).

(d)

FEE RATES FOR REVIEW

RULE	A If the review type is	B then the grade is	C and the hourly rate is
1	Clerical	E9 and GS-8 and below	$12
2	Professional	01-06 and GS-9-GS/GM-15	$25
3	Executive	07 and GS-16/ES 1, and above	$45

(e) Audiovisual Documentary Materials. Compute search costs the same as any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. When you provide audiovisual materials to a requester, there is no obligation to provide them in a reproducible format or quality.

(f) Other Records. Compute search and duplication cost for any record not described above in the same manner as audiovisual material.

(g) Costs for Special Services. You may comply with requests for special services. These services may include certifying that records are true copies and sending records by special methods like express mail. You may recover the costs of these special services, if the requester expressly asks for them and agrees to pay for them.

§ 806.35 Fee rates for technical data.

Technical data is recorded information, regardless of the form or method of recording, of a scientific or technical nature (including computer software documentation). It does not include computer software, or data incidental to contract administration, such as financial and management information. If required under the FOIA, release technical data other than that discloses critical technology with military or space application, after the requester submits payment for all reasonable costs for search, duplication, and review of the released records. Apply the fee rates in paragraphs (b), (d) and (e) of this section. If the product does not appear in paragraph (d) of this section, use the fair market value. Search and review fees remain as listed in paragraphs (b) and (e) of this section.

(a) Fee waivers for technical data. Waive any charges required above that exceed costs chargeable for the same information under § 806.34 if:

(1) A citizen of the United States or a U.S. corporation makes the request, and the citizen or corporation certifies they require the technical data to enable it to submit an offer, or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States. You may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, which you refund upon submission of an offer by the citizen or corporation.

(2) A requester asks for release of technical data to comply with the terms of an international agreement; or,

(3) You determine, using guidance in § 806.32, that a waiver is in the interest of the United States.

(b)

FEE RATES FOR SEARCH (TECH DATA)

RULE	A If the manual search type is	B then the grade is	C and the hourly rate is
1	Clerical	E9 and GS-8 and below	$13.25 (minimum charge is $8.30)
2	Professional	(see note 1)	actual. (Minimum ½ of hourly rate.)

NOTE: Establish before search at actual hourly rate.

(c) Computer search. Computer search is based on the total cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. Record as part of the computer search the wage (using the scale above) for the computer operator or programmer who determined how to conduct, and subsequently executed the search.

(c)

FEE RATES FOR DUPLICATION-TECH DATA

RULE	A If the type of document is	B and is	C then the cost is
1	aerial photographs, specifications, permits, charts, blueprints, and other technical documents		$2.50
2	engineering data (microfilm-aperture cards	Silver duplicate negative	.75 per card
3		Silver duplicate negative keypunched and verified	.85 per card
4		Diazo duplicate negative	.65 per card
5		Diazo duplicate negative keypunched and verified	.75 per card
6	engineering data (film)	35mm roll film	.50 per frame
7		16mm roll film	.45 per frame
8	engineering data (paper	prints (engineering drawings)	1.50 each
9		reprints of microfilm indices	.10 each

(e)

FEE RATES FOR REVIEW (TECH DATA)			
RULE	A	B	C
	If the review type is	then the grade is	and the hourly rate is
1	Clerical	E9 and GS-8 and below	$13.25 (minimum charge is $8.30)
2	Professional	(see note 1)	actual. (Minimum is ½ of hourly rate.)

NOTE: Establish before search at actual hourly rate.

(f) Other technical data records. Charge for any other services not specifically mentioned in paragraphs (b), (d) and (e) of this section, at the rates in paragraph (g) of this section.

(g)

FEES FOR OTHER TECHNICAL DATA RECORDS		
RULE	A	B
	If the type of document is	then the cost is
1	office copy (up to six images)	$3.50
2	additional image	$.10 each
3	typewritten page	$3.50 each
4	certification and validation with seal	$5.20 each
5	hand-drawn plats and sketches	$12 each hour or fraction thereof

Subpart G—Processing Appeals

§ 806.36 Appeals from denial of records.

Requesters may appeal denials of records in writing to the Office of the Secretary of the Air Force, within 60 calendar days after the date of the denial letter. If the requester submits the appeal after the 60 calendar days, he or she should include justification explaining the reason for the delay. MAJCOM and FOA FOIA offices will forward all appeals, including late submissions, to Air Force Legal Services Agency (AFLSA/JACL) for determination, unless, on reconsideration, they release all records. Requesters have exhausted all administrative remedies within the Department of the Air Force when they file an appeal to an initial denial or a no records response, and The Administrative Assistant to the Secretary of the Air Force (SAF/AA) issues a final decision. SAF/AA's appeal decision is the final Air Force action on the request. Requesters must address all appeals to the Office of the Secretary of the Air Force, through the MAJCOM or FOA FOIA office that denied the request. (For example, if HQ ATC denied the request, the requester must send his or her appeal to the Office of the Secretary of the Air Force, through HQ ATC/IMD (FOIA), Randolph AFB TX 78150–5000.) Requesters should attach to their appeal a copy of the denial letter and give their reasons for disagreement. After coordinating with the local SJA (and the OPR, if appropriate), the MAJCOM or FOA FOIA office must immediately send the appeal to AFLSA/JACL for processing. MAJCOM and FOA FOIA offices must process appeals as priority actions. MAJCOM and base FOIA offices do not get 20 workdays to process an appeal. Requesters must appeal denials involving Office of Personnel Management's controlled civilian personnel records to the Office of the General Counsel, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415. When forwarding appeals to AFLSA/JACL, attach:

(a) Original appeal letter and envelope.

(b) Initial request and any attachments.

(c) Copy of the denial letter, with an index of the denied material, if applicable.

(d) Copies of all records previously provided; or if voluminous and AFLSA/JACL consents, an index or description of the released records.

(e) Copies of all administrative processing documents, including opinions and recommendations discussing the request,

(f) Copy of the denied record, or denied portions of the record, marked to indicate what you withheld. If the records are voluminous (several cubic feet or more), you may substitute a detailed description of the documents with the consent of AFLSA/JACL.

(g) Point-by-point discussion of any factual and legal arguments contained in the requester's appeal; and evidence that the denial authority considered and rejected these arguments and reasons for doing so,

(h) Other documents in the file of the initial denial authority that will help in processing the appeal.

(i) Intra-agency documents you may have denied under the deliberative process privilege, an explanation of the decision making process and how the denied material fits into that process.

(j) Copy of the extension letter to the requester if you took a time extension. Assemble appeal packages systematically, tabbing attachments in the order listed above. List all attachments on your cover letter and include a point of contact and phone number. AFLSA/JACL will send the appeal through the Office of the General Counsel to SAF/AA for final determination. The law requires a final decision on appeals within 20 workdays after receipt of the appeal letter. The 20 days begins on receipt of the appeal by the FOIA Office for the IDA that denied the records. The time limit includes processing actions by all levels. If a final determination cannot be made within the time limits, AFLSA/ JACL acknowledges in writing to the requester receipt of the appeal and explains the reasons for the delay. If SAF/AA upholds the denial, in whole or in part, SAF/AA tells the requester of the determination, explains reasons for the denial, and tells the requester of his or her right to a judicial review of that determination. If SAF/AA grants the appeal, that office notifies the requester in writing and releases the record or directs its release.

§ 806.37 Appeals from no records determinations, denials of fee waiver requests and category determinations.

Appeal procedures for processing no records determinations, category determinations and fees are the same as those for denied records. For appeals to no records determinations, conduct an additional records search, if warranted, or verify the initial search. Include with your package to AFLSA/JACL pertinent correspondence validating the efforts of the systematic search (for example, what functional areas/offices were searched; how the search was conducted—manually, by computer, telephone, etc.) On fee and category appeals, the FOIA office that made the initial denial must reconsider the requester's arguments. If, after reconsideration, the FOIA office determination remains the same, it will coordinate with the local SJA and MAJCOM FOIA office, and immediately send the appeal to AFLSA/JACL for processing, with:

(a) Original appeal letter and envelopes.

(b) Initial request and any attachments.

(c) Denial letter.

(d) Point-by-point discussion of any factual and legal arguments contained in the requester's appeal; and evidence that the official denying the request considered and rejected these arguments and reasons for doing so.

(e) Full accounting of costs incurred or projected in acting on the request with a copy of the DD 2086 (or DD 2086–1).

(f) Other documents in the file that will help in processing the appeal. Coordinate all appeals with the local SJA and MAJCOM and FOA FOIA office before sending them to AFLSA/JACL.

Subpart H—For Official Use Only Information

§ 806.83 For Official Use Only (FOUO) explained.

FOUO information is not classified according to Executive Order, but is exempt from disclosure to the public under exemptions 2 through 9 of the FOIA (see § 806.15). Do not consider or mark any other records FOUO. FOUO material must meet the criteria for exemptions 2 through 9, or you cannot withhold it. FOUO is not authorized as a form of classification to protect national security interests.

§ 806.39 Prior FOUO application.

A FOUO marking is not a conclusive basis for withholding a record under the FOIA. When such a record is requested, evaluate the information in it to determine if FOIA exemptions apply and whether a discretionary release is appropriate.

§ 806.40 Time to mark records.

Marking records when they are created gives notice of FOUO content but does not eliminate the need to review a record requested under the FOIA. Examine records with and without markings before release to identify information that needs continued protection and qualifies as exempt from public release.

§ 806.41 Distribution statement.

Information in a technical document that requires a distribution statement according to AFR 80–45, must show that statement. The originator may also apply the FOUO marking, as appropriate.

§ 806.42 How to apply FOUO markings.

(a) Mark an unclassified document containing FOUO information For Official Use Only at the bottom, on the outside of the front cover (if any), on each page containing FOUO information, on the back page, and on the outside of the back cover (if any).

(b) In unclassified documents, note that the originator may also mark individual paragraphs that contain FOUO information to alert the users and assist in the review process.

(c) Mark an individual paragraph in a classified document that contains FOUO information, but no classified information, by placing (FOUO) at the beginning of the paragraph.

(d) Mark an individual page in a classified document that has both FOUO and classified information at the top and bottom with the highest security classification of information on that page.

(e) Mark an individual page in a classified document that has FOUO information, but no classified information, For Official Use Only at the bottom of the page.

(f) If a classified document also contains FOUO information, or, if the classified material becomes FOUO when declassified, place the following statement on the bottom of the cover or the first page, under the classification marking: If declassified, review the document to ensure material is not FOUO and exempt under AFR 4–33 before making a public release.

(g) Mark other records, such as computer printouts, photographs, films, tapes, or slides, For Official Use Only or FOUO in a way that ensures the recipient or viewer knows the record contains FOUO information.

(h) For FOUO material sent outside the DoD to authorized recipients, place an expanded marking to explain its meaning. Do this by typing or stamping the following statement on the document before transfer: This document contains information Exempt From Mandatory Disclosure Under the FOIA. Exemption(s) * * * applies (apply). (Further distribution is prohibited without the approval of (enter OPR)).

§ 806.43 Procedures for releasing, disseminating, and transmitting FOUO material.

(a) FOUO information may be sent within DoD components and between officials of DoD components and authorized DoD contractors, consultants, and grantees to conduct official business for the DoD. Inform recipients of the status of such information, and send the material in a way that prevents unauthorized public disclosure. Make sure documents that transmit FOUO material call attention to any FOUO attachments. Normally, FOUO records may be sent over facsimile equipment. To preclude unauthorized disclosure, consider such factors as attaching special cover sheets (i.e., AF Form 3227 for Privacy Act information), location of sending and receiving machines, and availability of authorized personnel to receive the FOUO information. FOUO information may be passed to officials in other departments and agencies of the executive and judicial branches to fulfill a government function. Mark the records For Official Use Only, and tell the recipient the information is exempt from public disclosure under the FOIA, and if special handling instructions apply. If the records are subject to the PA, refer to 32 CFR part 806b for PA disclosure policies.

(b) AFR 11–7 governs the release of FOUO information to members of the Congress and AFR 11–8 governs release to the General Accounting Office (GAO). Review records before release to the Congress or to the GAO to determine if the information warrants FOUO status. If not, remove prior FOUO markings. If the material still warrants FOUO status, mark the records FOUO and explain to the recipient the appropriate exemption and marking.

§ 806.44 Sending FOUO information by United States Postal Service

Send records containing FOUO information in a way that will not disclose their contents. When not mixed with classified information, individuals may send FOUO information by First Class Mail or Parcel Post. Bulky shipments, such as distributions of FOUO directives or testing materials, that otherwise qualify under postal regulations, may be sent by Fourth-Class Mail.

§ 806.45 Electrically transmitted messages.

Mark each part of an electrically transmitted message that contains FOUO information. Unclassified messages containing FOUO information must show the abbreviation FOUO before the beginning of the text. Transmit such messages according to AFR 700–7.

§ 806.46 Safeguarding FOUO information.

(a) During duty hours. During normal duty hours, place FOUO records in an out-of-sight location, if the work area is open to nongovernmental people.

(b) During nonduty hours. At the close of business, store FOUO records to prevent unauthorized access. File such material with other unclassified records in unlocked files or desks, etc., when the Government or a Government contractor provides normal internal building security during nonduty hours. When

there is no such internal security, locked buildings or rooms usually provide adequate after-hours protection. If you desire additional protection, store FOUO material in locked containers, such as file cabinets, desks, or bookcases.

§ 806.47 The termination, disposal and unauthorized disclosure of FOUO.

(a) Terminating FOUO material. The originator or other competent authority should remove FOUO markings or indicate on the document the markings no longer apply when circumstances show that the information no longer needs protection from public disclosure. When a record is no longer FOUO, tell all known holders, to the extent practical. Do not to retrieve records in files or storage only for that purpose.

(b) Disposing of FOUO material. Dispose of record copies of FOUO documents according to AFR 4–20, volume 2. Destroy duplicate or extra copies of FOUO materials by tearing each copy into pieces to preclude reconstruction, and place these torn pieces in regular trash containers. When this destruction method does not sufficiently protect FOUO information, local authorities may direct other methods. However, balance any additional expense against the degree of sensitivity of the FOUO information in the records. Recycling FOUO material is an option. Safeguard the FOUO documents or information until recycling occurs to preclude unauthorized disclosure. Recycling contracts must include a clause to address FOUO and PA safeguarding and destruction methods.

(c) Unauthorized disclosure. The unauthorized disclosure of FOUO records is not an unauthorized disclosure of classified information. Air Force personnel have a duty to take reasonable actions to protect FOUO records under their control from unauthorized disclosure. Appropriate administrative actions should be taken to fix responsibility for such disclosures and disciplinary action taken where appropriate. Unauthorized disclosure of FOUO information protected by the PA may also result in civil or criminal sanctions against individuals or against the Air Force. Tell the originating organization about an unauthorized disclosure of its records.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–21585 Filed 9–9–92; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09–92–18]

Special Local Regulations: The Fountain Powerboats Kilo Speed Challenge, Buffalo Outer Harbor, Lake Erie, Buffalo, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for The Fountain Powerboats Kilo Speed Challenge. This event will be held on the Buffalo Outer Harbor on September 18, 1992 from 8 a.m. (EDST) until 12 p.m. (EDST). The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective from 8 a.m. (EDST) until 12 p.m. (EDST) on September 18, 1992.

FOR FURTHER INFORMATION CONTACT: William A. Thibodeau, Marine Science Technician Third Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199–2060, (216) 522–4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received until 7 August 1992, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are William A. Thibodeau, Marine Science Technician Third Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Fountain Powerboats Kilo Speed Challenge will be conducted on the Buffalo Outer Harbor, Lake Erie, Buffalo, NY, on the 18th of September 1992. This event will have an estimated 40, 24 to 40 foot, offshore racing boats, which could pose hazards to navigation in the area. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station Buffalo, NY).

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectators into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Final Regulations

In consideration of the foregoing, part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35–T0918 to read as follows:

§ 100.35—T0918 The Fountain Powerboats Kilo Speed Challenge, Buffalo Outer Harbor, Lake Erie, Buffalo, NY.

(a) *Regulated Area.* That portion of the Buffalo Outer Harbor between the main line of the shore and the Outer Harbor Breakwall, from 100 yards northward of the Seaway Piers to one-half mile southward of the entrance to the Port of Buffalo Small boat Harbor. Recreational vessels located at marinas in the above regulated area will be allowed to transit the area when the

actual speed runs are not taking place, but only with the prior approval of the Coast Guard Patrol Commander.

(b) *Special Local Regulations.* (1) The above area will be closed to vessel navigation and anchorage, except when expressly authorized by the Coast Guard Patrol Commander, from 8 a.m. (EDST) until 12 p.m. (EDST) on the 18th of September 1992.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Any vessel, not authorized to participate in the event, desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Transiting vessels will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations, and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: August 20, 1992.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 92-21804 Filed 9-9-92; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD2 92-15]

Special Local Regulations: Fleur De Lis Regatta (Ohio River Mile 602.0 to Mile 604.0)

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Fleur De Lis Regatta. This event will be held near Jeffersonville, Indiana, on the Ohio River from mile 602.0 to mile 604.0, October 17 & 18 1992. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: The regulations will be effective daily, 11 a.m. to 5 p.m., October 17 & 18, 1992.

FOR FURTHER INFORMATION CONTACT: Ensign D. R. Dean, Chief, Boating Affairs Branch, Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103-2832. The telephone number is (314) 539-3971, Fax (314) 539-2685.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received until July 28, 1992. There was not sufficient time remaining to publish proposed rules in advance of the event.

Drafting Information

The drafter of these regulations is Ensign D. R. Dean, Project Officer, Second Coast Guard District, Boating Safety Division.

Discussion of Regulations

The Fleur De Lis Regatta consists of a sailing exhibition with approximately seventy-five participants. These regulations are required to protect the boating public from possible dangers and hazards associated with the event. In order to provide for the safety of spectators and participants, the Coast Guard will restrict vessel movement in the regulated area. The river will be closed during portions of the effective period to all vessel traffic except participants, official regatta vessels, and patrol craft. Actual river closures will not exceed three hours in duration. Mariners will be afforded enough time between closure periods to transit the area.

The Ohio River from Clark Memorial (Highway) Bridge at mile 603.5, downstream to McAlpine Dam at mile 604.4, is a regulated navigation area as set forth in 33 CFR 165.202. No pleasure or fishing craft shall be operated within the regulated navigation area at any time without prior permission of the Captain of the Port, Louisville, Kentucky, except in case of emergency and except for passage through McAlPine Lock. With these Special Local Regulations in place, the Captain of the Port, Louisville, Kentucky, has given permission for the affected vessels to operate in the regulated navigation area during this event.

These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR part 100.35.

List of Subjects in 33 CFR Part 100.

Marine Safety, Navigation (Water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35-T0216 is added, to read as follows:

§ 100.35-T0216 Fleur De Lis Regatta (Ohio River Mile 602.0 to Mile 604.0)

(a) *Regulated Area.* The Ohio River between mile 602.0 and mile 604.0.

(b) *Special Local Regulations.* (1) The U.S. Coast Guard and U.S. Coast Guard Auxiliary will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels desiring to transit the regulated area may do so only with the prior approval and direction of the Patrol Commander.

(2) The Patrol Commander may direct the anchoring, mooring or movement of any vessel within the regulated area. A succession of sharp, short blasts by whistle or horn from a designated patrol vessel shall be the signal to stop. Failure or refusal to stop or comply with orders of the Patrol Commander may result in expulsion from the area, citation for failure or refusal to comply, or both.

(3) The Patrol Commander may establish vessel size and speed limitations, and operating conditions.

(4) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(6) The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the marine event if earlier than the announced termination time.

(c) *Effective Dates.* These regulations are effective daily, 11 a.m., to 5 p.m., October 17 & 18, 1992.

Dated: August 28, 1992.

J. J. Lantry,

Captain, U.S. Coast Guard, Commander Second Coast Guard District, Acting.

[FR Doc. 92-21805 Filed 9-9-92; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD1 92-101]

Safety Zone Regulations: Taste of Italy Norwich Style Fireworks, Norwich, CT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in Norwich Harbor at Norwich, CT. This safety zone is needed to protect the maritime community from possible navigation hazards associated with a fireworks display. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

EFFECTIVE DATES: This regulation is effective from 8:45 pm through 9:30 pm on September 12, 1992 unless terminated sooner by the Captain of the Port. The rain date for this event is September 13, 1992 at the same times.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander D.D. Skewes, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468-4464.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LCDR D.D. Skewes, project officer for Captain of the Port, Long Island Sound, and LCDR J. Astley, project attorney, First Coast Guard District Legal Office.

Regulatory History

As authorized by 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Due to the date the application was received, there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date. The sponsor of this event, the United Italian Society of Norwich, is a nonprofit organization. This event is taking place in conjunction with the Taste of Italy Norwich Style Festival and is of general benefit and interest to the public. The area affected by this event receives infrequent commercial traffic. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to any potential hazards.

Background and Purpose

On August 3, 1992 the sponsor, United Italian Society of Norwich, Norwich, CT requested that a 45 minute fireworks display, launched from a floating platform, be permitted on the Thames River, in the port of Norwich in the vicinity of Norwich Harbor, Norwich, CT. This zone is required to protect the maritime community from the dangers and potential hazards to navigation, including falling debris and potential fireworks launching mishaps, associated with this fireworks display which is occurring over a navigable waterway. The zone covers all waters of Norwich Harbor within a square, 800' on a side, centered on the American Wharf Barge.

Regulatory Evaluation

These regulations are not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979).

The event will last approximately 45 minutes. The area affected by this event receives infrequent commercial traffic. Because of the short duration of the event, commercial entities will be able to adjust to any disruptions caused by this event. The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons cited under the Regulatory Evaluation section above, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and has determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, they will have no significant impact and they are categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new § 165.T01-101 is added to read as follows:

§ 165.T01-101 Safety Zone: Taste of Italy Norwich Style Fireworks, Norwich, CT.

(a) *Location.* The following area has been declared a safety zone: All waters of the Thames River in Norwich Harbor within a square marked by temporary buoys. The area is 800' on a side, centered on the American Wharf Barge, the fireworks launching platform, which will be located approximately 600' southeast of the Marina at American Wharf in approximate position 41°31'20" N 072°04'83" W.

(b) *Effective date.* This regulation is effective from 8:45 pm through 9:30 pm on September 12, 1992 unless terminated sooner by the Captain of the Port. The rain dates for this project are September 13, 1992 at the same times.

(c) *Regulations.* The general regulations covering safety zones contained in § 165.23 of this part, apply to all persons, objects and vessel movement within this zone.

Dated: August 25, 1992.

H. Bruce Dickey,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 92-21806 Filed 9-9-92; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

48 CFR Parts 215, 252, and 270

Defense Federal Acquisition Regulation Supplement; Recoupment of Nonrecurring Costs on Sales or Licensing of U.S. Items

AGENCY: Department of Defense.

ACTION: Interim rule and request for comments.

SUMMARY: The Department of Defense is amending the Defense Federal Acquisition Regulation Supplement (DFARS) language on recoupment of nonrecurring costs to implement major policy changes that have been incorporated in DoD Directive 2140.2, Recoupment of Nonrecurring Costs (NC) on Sales or Licensing of U.S. Items. The revised DoD Directive 2140.2 was published as an interim rule on July 2, 1992 (57 FR 29619).

DATES: *Effective Date:* September 1, 1992.

Comment Date: Comments on the interim rule should be submitted in writing at the address shown below on or before October 26, 1992 to be considered in the formulation of a final rule. Please cite DFARS Case 92-D021 in all correspondence related to this rule.

ADDRESSES: Interested parties should submit written comments to The Defense Acquisition Regulations Council, ATTN: Mr. Charles W. Lloyd, OUSD(A), 3062 Defense Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Charles W. Lloyd, (703) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends the Defense Federal Acquisition Regulation (DFARS) language on Recovery of Nonrecurring Costs and Royalty Fees on Commercial Sales, which currently is in DFARS part 270 and the clause at 252.270-7000. This rule is the result of a major change in Department of Defense (DoD) policy on recoupment of nonrecurring costs. The change is described in detail in the summary statement included with the interim rule that was published in the Federal Register on July 2, 1992 (57 FR 29619) and codified at 32 CFR part 165. Under the revised DoD Policy, on new contracts only Major Defense Equipment that is to be used for military purposes will be subject to recoupment charges.

This interim DFARS rule supersedes the proposed rule that was published in the Federal Register on October 25, 1991, (56 FR 55264), under DAR Case 91-33.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act applies, but the proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because the recoupment policies apply only to items which have at least a $50 million investment. An initial regulatory flexibility analysis has therefore not been performed. However, comments are invited from small businesses and other interested parties. Such comments must be submitted separately and must cite DAR Case 92-610 in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies and approval from OMB is being requested.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This rule is necessary to implement in the Defense Federal Acquisition Regulation Supplement the revised Department of Defense recoupment policies which were published July 2, 1992.

List of Subjects in 48 CFR Parts 215, 252, and 270

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 215, 252, and 270 are amended as follows:

1. The authority citation for 48 CFR part 215, 252, and 270 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, Defense FAR Supplement 201.301.

PART 215—CONTRACTING BY NEGOTIATION

2. Subpart 215.70 is added to read as follows:

Subpart 215.70—Recoupment of Nonrecurring Costs

Sec.

Subpart 215.70—Recoupment of Nonrecurring Costs

215.7000 Scope

This subpart sets forth policy and procedures for recoupment from DoD contractors and their subcontractors of a fair share of the DoD's investment, or of a foreign military sale (FMS) customer's investment, in the nonrecurring costs of major defense equipment. It implements DoDD 2140.2, Recoupment of Nonrecurring Costs (NC) on Sales or Licensing of U.S. Items.

215.7001 Definitions

See the clause at 252.215-7004, Recoupment of Nonrecurring Costs, for definitions of the terms used in this subpart.

215.7002 Policy

(a) Consistent with section 21(e)(1)(B) of the Arms Export Control Act (22 U.S.C. 2761(e)(1)(B)), DoD will recoup a fair (pro rata) share of its investment in the nonrecurring costs of major defense equipment when the contractor or its subcontractor—

(1) Sells the equipment to any customer, unless the U.S. Government is the ultimate customer or the equipment is to be used for non military purposes; or

(2) Licenses others to produce for military purposes major defense equipment.

(b) DoD policy also is to recoup in selected cases, on behalf of a foreign government or international organization, a fair share of the nonrecurring costs for a special feature, unique requirement, or product paid for by the foreign government or international organization under an FMS case.

215.7003 General

(a) The fair share is recovered through assessment of nonrecurring cost recoupment charges established by DoD. The recoupment charges are determined in accordance with DoDD 2140.2, Recoupment of Nonrecurring Costs (NC) on Sales or Licensing of U.S. Items, and are administered through the following DoD focal points:

(1) U.S. Army Security Affairs Command, Attn: AMSAC–RP, 5001 Eisenhower Avenue, Alexandria, VA 22333–0001.

(2) U.S. Navy, Director, Navy International Programs Office (IPO–04B), Washington, DC 20350–5000.

(3) U.S. Air Force, Assistant for Security Assistance, SAF/FMBIS, Pentagon, Washington, DC 20330–1000.

(b) Contracting officers should refer immediately any issue raised by contractors concerning a recoupment charge to the appropriate DoD focal point.

215.7004 Contractor responsibilities

DoD contractors and their subcontractors are responsible, under the terms of the clause at 252.215–7004, Recoupment of Nonrecurring Costs, for—

(a) Contacting the appropriate DoD focal point to determine the recoupment charge before entering into any sale, coproduction agreement, license to produce, technical assistance agreement, or transfer agreement for major defense equipment that is subject to the recoupment policy in 215.7002;

(b) Notifying the appropriate DoD focal point of all sales to, or agreements or licenses with customers other than the U.S. Government, except when the U.S. Government is the eventual purchaser, for major defense equipment subject to the recoupment policy in 215.7002; and

(c) Paying the recoupment charges to the office specified by the DoD focal point.

215.7005 Waiver or reduction of recoupment charges

Requests for waiver or reduction of a recoupment charge are submitted in accordance with DoDD 2140.2, Recoupment of Nonrecurring Costs (NC) on Sales of Licensing of U.S. Items, to the Director, Defense Security Assistance Agency.

215.7006 Contract clause

Use the clause at 252.215–7004, Recoupment of Nonrecurring Costs, in all research, development, test, and evaluation and production contracts of $10 million or more.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.215–7004 is added to read as follows:

252.215–7004 Recoupment of nonrecurring costs

As prescribed in 215.7006, use the following clause:

Recoupment of Nonrecurring Costs (Aug 1992)

(a) *Definitions.*

As used in this clause—

(1) *Major defense equipment* means any item of significant military equipment on the United States Munitions List that has a nonrecurring research, development, test, and evaluation cost of more than $50 million or a total production cost of more than $200 million, as determined in accordance with DoD Directive 2140.2, Recoupment of Nonrecurring Costs (NC) on Sales or Licensing of U.S. Items.

(2) *Nonrecurring costs* means "nonrecurring production costs" and "nonrecurring research, development, test, and evaluation costs" as defined in DoD Directive 2140.2 and generally includes costs funded by a Department of Defense (DoD) RDT&E appropriation or one-time production costs, funded by a DoD procurement or other appropriation, such as preproduction engineering, rate and special tooling, special test equipment, production engineering, product improvement, destructive testing, and pilot model production, testing, and evaluation.

(b) The Contractor agrees to pay to the Government nonrecurring cost recoupment charges, determined in accordance with DoD Directive 2140.2, Recoupment of Nonrecurring Costs (NC) on Sales or Licensing of U.S. Items, in effect on the date this contract is executed by the Contracting Officer, when the Contractor or its subcontractor—

(1) Sells to a non-U.S. Government purchaser for military use major defense equipment of the type developed or produced under this contract; or

(2) Licenses others to produce for military purposes major defense equipment of the type developed or produced under this contract.

No such payment will be required if payment is waived in accordance with DoD Directive 2140.2.

(c) The Contractor shall—

(1) Before entering into any sale, coproduction agreement, license to produce, technical assistance agreement, or other transfer or rental agreement for major defense equipment of the type developed or produced under this contract, contact the appropriate Department of Defense (DoD) focal point listed in section 215.7003 of the Defense Federal Acquisition Regulation Shipment to determine the recoupment charge applied to such equipment.

(2) Within 30 days after entering into any sale or agreement of the type in paragraph (c)(1) of this clause, provide a notification to the appropriate DoD focal point to include—

(i) Brief description of the major defense equipment;

(ii) Name and address of the purchaser;

(iii) Whether the equipment or technology is to be used for a non military purpose;

(iv) Quantity;

(v) Delivery schedule;

(vi) Identification of the U.S. Government export license, if applicable; and

(vii) Recoupment charges identified by the DoD focal point.

(3) Within 30 days after delivery to or acceptance of the equipment by the purchaser, whichever comes first, pay the recoupment charges to the office specified by the DoD focal point.

(4) Within 60 calendar days after the end of each calendar year in which payment of a recoupment charge was due, submit the following certification to the DoD focal point:

Recoupment of Nonrecurring Costs Certification

I hereby certify that, to the best of my knowledge and belief, all notifications required by the Recoupment of Nonrecurring Costs clause of contract _____ have been provided and are accurate, complete, and current as of the end of calendar year _____.

Contractor _____
Signature _____
Title _____
Date _____

(d) In the event of a sale of equipment subject to a recoupment charge, the Contractor agrees to relieve the Government of any and all loss or liability that might result from the use of Government data, tooling, test equipment, or facilities.

(e) The Contractor shall include this clause, including this paragraph (e), in all subcontracts of $10 million or more.

(End of clause).

252.270–7000 [Removed]

4. Section 252.270–7000 is removed.

PART 270—[REMOVED]

5. Part 270 is removed.

[FR Doc. 92–21666 Filed 9–9–92; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–09; Notice 27]

RIN 2127–AD45

Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule amends Federal Motor Vehicle Safety Standard 213, *Child Restraint Systems*, to require add-on child restraints to meet the requirements of the standard at each of the angles to which the seat back can be adjusted and at each of the restraint belt routing positions. This amendment improves safety by removing the possibility that a child restraint can be designed to transport a child in a motor vehicle or aircraft while the restraint is adjusted to a position in which the

restraint would not comply with the standard.

DATES: The amendment is effective on March 9, 1993.

Petitions for reconsideration of the final rule must be received by October 13, 1992.

ADDRESSES: Petitions for reconsideration of the final rule should refer to the docket number and notice number of this rule and be submitted to: Administrator, room 5220, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590.

FOR FURTHER INFORMATION CONTACT: Dr. George Mouchahoir, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: (202) 366–4919.

SUPPLEMENTARY INFORMATION: This rule amends S5 of Standard 213, *Child Restraint Systems*, to expand the requirements for child restraint systems manufactured for use in motor vehicles, and motor vehicles and aircraft.

The requirements are expanded to apply to previously-excluded adjustment positions on child restraints. Child restraint systems typically have more than one seat back angle adjustment position and a number of restraint belt routing positions. Under the standard before this amendment, adjustment positions could be excluded from the excursion (S5.1.3) and seat inversion (S8.2) requirements of the standard if the manufacturer warned that the positions were not for use in motor vehicles or aircraft.

This rule eliminates that exclusion of adjustment positions, regardless of whether the manufacturer provides a warning. This rule also removes the related provisions (S5.5.2(i), S8.1) that required manufacturers of restraints with excluded adjustment positions to identify those positions on labels attached to the restraints. This rule also amends the conditions for the dynamic systems test and the inversion test to clarify the effect of removing these provisions.

The proposal for this rule was published on August 12, 1991 (56 FR 38105). NHTSA began this action in response to a petition for rulemaking from Consumer Action (CA) and the Center for Auto Safety (CAS).

Background

This rulemaking highlights the relationship between the test procedures specified in Standard 213 and the performance required of a child restraint system. The National Traffic and Motor Vehicle Safety Act requires child restraint manufacturers to certify each restraint as complying with Standard 213. NHTSA checks the validity of the certification by evaluating the restraint's performance when tested in accordance with the procedures specified in the standard (S6, S8). Generally, the procedures for the dynamic sled and seat inversion tests specify that the restraint be installed on a simulated car or aircraft seat "in accordance with the manufacturer's instructions" provided to the consumer. (However, the procedures for the dynamic sled test require that most restraints must be secured using only the standard vehicle lap belt. See, S6.1.2.1.1(a)). The procedures also specify that the test dummy used to test the restraint is positioned "according to the instructions for child positioning" provided by the manufacturer to the consumer. (See, e.g., S6.1.2.3.1, 6.1.2.3.2 and 6.1.2.3.3.) The installation instructions must provide a narrative discussion and diagrams to facilitate installing the restraint in motor vehicles or aircraft, positioning a child in the restraint, and adjusting the restraint to fit the child (S5.6.1 and S8.1).

Each adjustment position of a child restraint is currently subject to dynamic testing unless the restraint's manufacturer does not intend that position to be used in motor vehicles or aircraft and expressly states that intent on a label attached to the restraint. If the position is not intended to be so used, it is excluded from the standard's occupant excursion (S5.1.3) and inversion (S8.2) requirements. The purpose of the excursion and inversion requirements is to ensure that the child occupant is retained within the system in a crash.

Consumer Action and CAS requested that NHTSA amend Standard 213 by removing the provision, S5.5.2(i), which requires manufacturers to warn consumers, by way of a warning label on the restraint, against using an adjustment position in a vehicle if the manufacturer deems the position is unsuitable for such use. The petitioners believed that the S5.5.2(i) warning label is insufficient to ensure that a child restraint system will not be used in the restricted positions in a motor vehicle. It appeared that the basis for the petition was the petitioners' belief that warning labels are generally ineffective.

NHTSA issued a notice of proposed rulemaking (NPRM) to further consider the issue of restricted adjustment positions. NHTSA did not agree with the petitioners that warning labels are generally insufficient to produce desired behaviors. However, the agency was concerned about positions that are unsuitable for vehicle use, yet are made a part of a child restraint system for no reason that outweighs the likelihood that the seat will be misused and the risk to safety unacceptably increased. (56 FR at 38106.)

NHTSA developed a proposal to achieve the purpose of the requested amendment. With regard to restraints for motor vehicles, NHTSA proposed to amend S5.1.3, *Occupant excursion*, to remove the provision that excludes the restricted positions from the excursion requirement. Since the exclusion would be removed, NHTSA also proposed to remove S5.5.2(i), the labeling provision for restricting a position. To make clear the effect of these amendments, NHTSA proposed to amend S5 to require each restraint to "meet the requirements in [S5] at all adjustment positions (including, but not limited to each seat back angle adjustment position and each restraint belt anchorage and routing position), when tested in accordance with S6.1" of Standard 213.

With regard to restraints for aircraft, the NPRM proposed similar amendments. The NPRM proposed to remove the provision in Standard 213 that excludes restricted adjustment positions from the inversion test requirement (S8.2) and to remove the warning label requirement in S8.1.

In issuing the NPRM, NHTSA believed that most manufacturers had ceased designing child restraints with adjustment positions not intended for motor vehicle and aircraft use. However, the agency tentatively concluded the amendments were needed to ensure that no restricted position would be included in future restraint systems. *Id.*

Comments on the NPRM

NHTSA received comments from CAS, Advocates for Highway and Auto Safety, Cosco, Ford Motor Company, and the University of Michigan. These entities generally supported the NPRM, with comments relating to particular issues raised by the proposal.

Effect of S5

Cosco and the University of Michigan suggested that the language of the proposed amendment to S5 was unclear and overbroad. Cosco said that a number of adjustment positions on its child restraints could be unintentionally affected by the proposed S5, and that convertible restraints might be especially affected. (Convertible restraints are restraints designed for use by both infants and toddlers. For most convertible restraints, certain restraint adjustment positions are designed for infants only, while other positions are

suitable for toddlers only.) Emphasizing that the NPRM stated convertible restraints serve a safety need, Cosco argued that their manufacture should not be prohibited.

Cosco gave several examples of how it believed that the proposed language of S5 would create uncertainty about the permissibility of certain adjustment positions on convertible restraints. Cosco said that its "Dream Ride" restraint is a "car seat/car bed with an upright, rear-facing position and fully reclined, side-facing position." The instructions for the restraint state that it should not be used in a front-to-back position when fully reclined, i.e., placed in a vehicle so that its and the vehicle's longitudinal axes are parallel.

The commenter believed that the proposed language would subject the fully reclined position to Standard 213 requirements in the front-to-back position on the standard seat assembly. Cosco suggested that S5 should expressly permit manufacturers to "designate . . . that certain weights and seating positions are not acceptable under certain conditions, as long as there are no adjustment positions available which cannot be used in motor vehicles under any conditions."

To address Cosco's concerns, NHTSA has made several changes. The agency has revised the amendment to S5. The amendment retains the existing statement in S5 about child restraint requirements:

Each child restraint system certified for use in motor vehicles shall meet the requirements in this section when, as specified, tested in accordance with S6.1.

In addition, the agency is adding a statement specifying that each add-on system shall meet the requirements of S5 at each of the restraint's seat back angle adjustment positions and restraint belt routing positions, when the restraint is oriented in the direction recommended for use (e.g., forward, rearward or laterally) pursuant to S5.6, and used with the test dummy specified in S7 of the standard.

Under the first sentence in S5, the orientation and adjustment of a child restraint for compliance testing purposes is determined based upon the instructions given by manufacturers to consumers regarding the installation and use of that restraint. The second sentence qualifies the first sentence by limiting the extent to which a manufacturer's instructions affect how and to what extent a child restraint is subject to testing under the standard. Under the second sentence, regardless of the manufacturer's instructions, a child restraint is subject to testing in all seat back angles and belt routing positions. However, a manufacturer's instructions about a matter such as restraint orientation will still affect compliance testing. For example, if a manufacturer's instructions state that a car bed is to be installed side-to-side (perpendicular to the vehicle's longitudinal axis) but not front-to-back (parallel to that axis), the car bed will be subject to testing in the side-to-side orientation only.

It does not appear, however, that the originally proposed amendment to S5 would have caused the seat positioning problems Cosco described for its Dream Ride restraint. The proposed text retained the present provision in S5 that restraints are "tested in accordance with S6.1," the section in the standard that specifies the test conditions and procedures for the dynamic systems test. Under S6.1, a restraint is installed on a simulated vehicle seat in accordance with the manufacturer's instructions. A restraint that is designed to be adjusted to different configurations for different child weights is oriented forward, rearward or laterally, depending on the manufacturer's instructions for using the restraint.

The University of Michigan (UM) suggested S5 would be clearer if it stated: "Each child restraint system certified for use in motor vehicles shall meet the requirements in this section at each adjustment position (. . .) in at least one type of vehicle (ground or aircraft) when tested in accordance with the procedures of S6.1 for at least one specified range of child weight." As amended today, S5 is similar to UM's suggested text. However, the agency has not adopted the "ground or aircraft" language suggested by the commenter. When a manufacturer certifies its restraint as complying with the requirements for restraints for aircraft, the manufacturer states: "This Restraint Is Certified for Use in Motor Vehicles *and* Aircraft." (S5.5.2(m); emphasis added.) An adjustment position that meets Standard 213 for aircraft use but not for vehicle use would not be acceptable under the standard.

Other Amendments

This rule makes conforming changes to the test procedures for the excursion and inversion requirements. Currently, the test dummy used to test to these requirements is positioned in the restraint according to the manufacturer's instructions for child positioning. Under today's amendment, each of the restraint's seat back angles and belt routing positions will be subject to testing, notwithstanding the manufacturer's instructions not to use those adjustment positions in vehicles or aircraft.

Aircraft Use

Cosco commented that the proposed amendment to the requirements for restraints certified for aircraft use would have a negative impact on its Dream Ride restraint. NHTSA disagrees.

Cosco said it currently informs the consumer that the restraint should be used on aircraft only in the partially upright (rear-facing) position. Cosco said that it does not recommend the fully reclined position on aircraft since two aircraft seats are needed to accommodate the restraint in that adjustment position and consumers are unlikely to purchase those seats. Cosco indicated that the Dream Ride performs adequately in the car bed position, if the two aircraft seats are used. The commenter was concerned that it would have to eliminate the fully reclined position because the position is one that is not intended for use in aircraft.

NHTSA does not seek to have Cosco eliminate the fully reclined position on its restraint, or remove the Dream Ride from the models of restraints certified for both motor vehicles and aircraft. Safety is furthered by the availability of restraints manufactured for both vehicles and aircraft.

NHTSA does seek to ensure through today's amendment to the aircraft requirements that each seat back angle and belt routing position in restraints manufactured for both vehicles and aircraft passes the inversion requirement when tested according to the procedures in the standard. Cosco indicated that the Dream Ride, fully reclined, would pass the inversion test while fully-reclined and positioned crosswise, on two aircraft seats. If that is the case, the restraint already complies with the standard's amended aircraft requirements. As long as the restraint passes while fully reclined and positioned crosswise, the existence of that adjustment position does not prohibit Cosco from manufacturing and selling that child restraint. Further, nothing prohibits Cosco from recommending in its information to consumers that the seat not be used in that orientation on aircraft. Thus, the restraint must meet the inversion test in all of its back angles and belt routing positions. For example, the Dream Ride could be tested fully reclined with the six-month-old dummy while positioned crosswise, on two aircraft seats, even if Cosco recommends the fully reclined position not be used on aircraft.

Built-in Restraint Systems

Ford said the proposed amendments to S5 could complicate testing of built-in child restraints that form part of a reclining vehicle seat. Ford stated:

> Built-in child restraints can be installed in vehicle seats that can be adjusted to positions that are not intended for use while the vehicle is moving. For example, many vehicle seats can be reclined to allow weary drivers and passengers to rest at highway rest areas.

Ford suggested that the proposed amendment expressly apply to add-on restraints only. The commenter believed such application was intended by the agency, since no mention was made in the preamble for the NPRM about built-in restraints.

Ford also asked about an apparent discrepancy between the effect of the proposed S5 on built-in restraints and the specified test conditions (S6.1.1) for testing the restraints. The proposed S5 would have required built-in restraints to meet the standard's requirements "at all adjustment positions" when tested in accordance with the conditions and procedures of S6.1. However, under S6.1, if a specific vehicle is used (the second of two standard test devices that can be used, at the manufacturer's option, to test a built-in system), a built-in system is tested with the vehicle seat "in the manufacturer's nominal design riding position." Stated differently, S6.1 provides for testing only one adjustment position.

Ford is correct that the agency intended only to address add-on systems in this rulemaking action. NHTSA did not consider how the proposed amendment would affect adjustment positions on built-in seats. For those seats, a reclining vehicle seat back may also be the seat back of a child restraint built into the vehicle seat.

A built-in system that is part of a seat with a reclining seat back would probably fail to meet the standard if the seat back were reclined and if today's rule applied to it. Such an amendment could have required some redesigning of seats. The agency is uncertain whether there is sufficient reason to disallow the reclining feature. Reclining seats let weary drivers and passengers rest at highway rest areas (as discussed by Ford in its comment). Indeed, NHTSA has observed that some reclining seat backs in vans recline all the way down to the horizontal position so as to create a sleeping surface stretching from the rear of the third seating surface to the front of the second seating surface. Reclining seats also provide for easier loading of the vehicle.

Use of a built-in restraint when the vehicle seat back is reclined at a sharp angle would be undesirable. However, until the agency learns that vehicles being driven with children in such reclined positions occurs frequently enough to become a significant problem, the relative merits of the reclining vehicle seat need not be further addressed. There is sufficient justification for the reclinability of such seats to warrant their exclusion from today's S5 amendments. However, NHTSA recommends that manufacturers warn consumers against using an adjustment position on a built-in restraint while the vehicle is in motion if the position cannot provide adequate protection.

In response to an issue raised by Ford in its comment, today's rule adopts a technical amendment to the standard's test conditions for built-in restraints. As stated above, Standard 213 permits manufacturers the option of choosing to test a built-in system with the specific vehicle shell or the specific vehicle. (S6.1.1.1(a).) Ford pointed out that the conditions under which a built-in system is tested using the shell are inconsistent with those under which the vehicle is tested.

The conditions are specified in much greater detail for the vehicle test than the shell test. Some of the conditions are appropriate for the vehicle and not for the shell, e.g., vehicle loading specifications. However, many of the conditions specified in the vehicle test are relevant for the shell test but are not specified for the latter. For example, conditions for the longitudinal and vertical seat positioning, and seat back adjustment position, are relevant yet unspecified.

As a practical matter, the lack of specifications is inconsequential. The test procedures for built-in restraints direct NHTSA to "activate the restraint in the specific vehicle shell or the specific vehicle, in accordance with the manufacturer's instructions provided in the vehicle owner's manual in accordance with S5.6.2." (See S6.1.2.1.1 and S6.1.2.1.2.) Under these instructions, the vehicle seat that contains the built-in child restraint generally would be adjusted as the manufacturer directs, for both the vehicle and the shell tests.

This rule makes the test conditions for the vehicle and shell tests consistent, in response to Ford's request that the conditions be clarified. The amendment is merely technical; the agency believes there will be no changes in the manner in which built-in restraints are tested.

Other Comments

NHTSA stated in the NPRM that the agency conducted an informal survey of 15 restraint systems, and did not find any currently being manufactured that is labeled with the S5.5.2(i) warning. 56 FR at 38106. Both CAS and Advocates for Highway and Auto Safety (Advocates) said the NHTSA should survey all child seat manufacturers to determine whether restraints are being sold with restricted adjustment positions.

NHTSA dose not believe an additional survey is necessary. Child restraint manufacturers did not question the validity of the agency's survey, except to point out the issue about built-in restraints, discussed above. An additional survey is unlikely to yield knowledge more useful than the information that the agency already possesses.

CAS and Advocates commented also on issues that were outside the scope of the rulemaking proposal. They concurred with NHTSA that convertible restraints should continue to be available to consumers. However, both organizations suggested further large-scale testing of the restraints by NHTSA. CAS said the agency should determine whether the seats "provide adequate protection in any adjustment position." Advocates urged NHTSA to conduct tests on whether convertible seats are being properly used by the consumer. CAS and Advocates also commented on improving Standard 213's labeling requirements. Both said the agency should guide the industry toward developing improved consumer information on the appropriate use of a restraint system.

NHTSA regards these comments as suggestions for future rulemaking. The agency has placed copies of the comments in NHTSA docket 74-09-N21, which relates to planned research and possible upgrades to Standard 213.

Typographical Correction

No comments were received on the proposed correction of S5.3.1. The correction is made in this rule.

Concurrent Amendments

Readers should note that Standard 213's labeling requirements are further amended by a final rule published elsewhere in today's edition of the Federal Register. That rulemaking relates to an owner registration requirement for child restraint systems. In addition, NHTSA published an NPRM to amend certain labeling and other requirements for built-in restraint systems (57 FR 870; January 9, 1992). Any amendments that might ultimately

be adopted based on the January 1992 notice may modify existing labeling requirements, including the requirements adopted today.

This final rule does not have any retroactive effect. Under Section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. NHTSA has further determined that the effects of this rulemaking are minor and that preparation of a full preliminary regulatory evaluation is not warranted. Based on available data, NHTSA believes that all child restraint systems currently in production are being manufactured to meet the requirements of Standard 213 at each of the restraint's seat back angle adjustment positions and belt routing positions. The agency therefore estimates that no additional costs will be incurred by manufacturers by this rule.

Because all currently manufactured restraint systems already meet the requirements adopted today, NHTSA does not anticipate a potential reduction in injuries or fatalities from this rule. However, the agency believes that amendments ensure that the current level of safety provided by restraint systems is maintained.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Only about six of the 11 manufacturers currently producing child restraint systems are not small businesses. Regardless of the number of small entities, NHTSA believes the economic impact on them is not significant, since the restraint systems currently manufactured meet the requirements adopted today. The agency believes this rule has no impact on the cost of child restraint systems, and that small organizations and governmental jurisdictions that purchase the systems will not be significantly affected by the rule. In view of the above, the agency has not prepared a final regulatory flexibility analysis.

Executive Order 12612

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, motor vehicle safety, motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as set forth below.

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.213 [Amended]

2. The introductory text of S5 is revised to read as follows:

S5 *Requirements for child restraint systems certified for use in motor vehicles.* Each child restraint system certified for use in motor vehicles shall meet the requirements in this section when, as specified, tested in accordance with S6.1 and this paragraph. Each add-on system shall meet the requirements at each of the restraint's seat back angle adjustment positions and restraint belt routing positions, when the restraint is oriented in the direction recommended by the manufacturer (e.g., forward, rearward or laterally) pursuant to S5.6, and tested with the test dummy specified in S7.

* * * * *

3. S5.1.3 is revised to read as follows:

* * * * *

S5.1.3 *Occupant excursion.* When tested in accordance with S6.1, each child restraint system shall meet the application excursion limit requirements specified in S5.1.3.1–S5.1.3.3.

* * * * *

4. S5.3.1 is revised to read as follows:

* * * * *

S5.3.1 Each add-on child restraint system shall have no means designed for attaching the system to a vehicle seat cushion or vehicle seat back and no component (except belts) that is designed to be inserted between the vehicle seat cushion and vehicle seat back.

* * * * *

5. S5.5.2(i) is removed and reserved.

6. S5.5.5(g) is revised to read as follows:

* * * * *

(g) The statement specified in paragraph (1), and if appropriate, the statement in paragraph (2):

(1) WARNING! FAILURE TO FOLLOW THE MANUFACTURER'S INSTRUCTIONS ON THE USE OF THIS CHILD RESTRAINT SYSTEM CAN RESULT IN YOUR CHILD STRIKING THE VEHICLE'S INTERIOR DURING A SUDDEN STOP OR CRASH.

(2) In the case of each built-in child restraint system which is not intended for use in the motor vehicle at certain adjustment positions, the following statement, inserting the manufacturer's adjustment restrictions. DO NOT USE THE _____ ADJUSTMENT POSITION(S) OF THIS CHILD RESTRAINT WHILE THE VEHICLE IS IN MOTION.

* * * * *

7.S6.1.1.1(a) through (b) is revised and the introductory text of S6.1.1.1(c) is removed to read as follows:

* * * * *

S6.1.1.1(a) The test device for add-on restraint systems is the standard seat assembly specified in S7.3. The assembly is mounted on a dynamic test platform so that the center SORL of the seat is parallel to the direction of the test platform travel and so that movement between the base of the assembly and the platform is prevented.

(b) The test device for built-in child restraint systems is either the specific vehicle shell or the specific vehicle.

(1)(i) The specific vehicle shell, if selected for testing, is mounted on a dynamic test platform so that the longitudinal center line of the shell is parallel to the direction of the test platform travel and so that movement

between the base of the shell and the platform is prevented. Adjustable seats are in the adjustment position midway between the forwardmost and rearmost positions, and if separately adjustable in a vertical direction, are at the lowest position. If an adjustment position does not exist midway between the forwardmost and rearmost position, the closest adjustment position to the rear of the midpoint is used. Adjustable seat backs are in the manufacturer's nominal design riding position. If such a position is not specified, the seat back is positioned so that the longitudinal center line of the child test dummy's neck is vertical, and if an instrumented test dummy is used, the accelerometer surfaces in the dummy's head and thorax, as positioned in the vehicle, are horizontal. If the vehicle seat is equipped with adjustable head restraints, each is adjusted to its highest adjustment position.

(ii) The platform is instrumented with an accelerometer and data processing system having a frequency response of 60 Hz channel class as specified in Society of Automotive Engineers Recommended Practice J211 JUN80 "Instrumentation for Impact Tests." The accelerometer sensitive axis is parallel to the direction of test platform travel.

(2) For built-in child restraint systems, an alternate test device is the specific vehicle into which the built-in system is fabricated. The following test conditions apply to this alternate test device.

* * * * *

8. In S6.1.1, S6.1.1.5 is added to read as follows:

* * * * *

S.1.1.5 In the case of add-on child restraint systems, the restraint shall meet the requirements of S5 at each of its seat back angle adjustment positions and restraint belt routing positions, when the restraint is oriented in the direction recommended by the manufacturer (e.g., forward, rearward or laterally) pursuant to S5.6, and tested with the test dummy specified in S7.

9. S8.1 is revised to read as follows:

* * * * *

S8.1 *Installation instructions.* Each child restraint system manufactured for use in aircraft shall be accompanied by printed instructions in English that provide a step-by-step procedure, including diagrams, for installing the system in aircraft passenger seats, securing a child in the system when it is installed in aircraft, and adjusting the system to fit the child.

10. S8.2 is revised to read as follows:

* * * * *

S8.2 *Inversion test.* When tested in accordance with S8.2.1 through S8.2.5, each child restraint system manufactured for use in aircraft shall meet the requirements of S8.2.1 through S8.2.6. The manufacturer may, at its option, use any seat which is a representative aircraft passenger seat within the meaning of S4. Each system shall meet the requirements at each of the restraint's seat back angle adjustment positions and restraint belt routing positions, when the restraint is oriented in the direction recommended by the manufacturer (e.g., facing forward, rearward or laterally) pursuant to S8.1, and tested with the test dummy specified in S7. If the manufacturer recommendations do not include instructions for orienting the restraint in aircraft when the restraint seat back angle is adjusted to any position, position the restraint on the aircraft seat by following the instructions (provided in accordance with S5.6) for orienting the restraint in motor vehicles.

Issued on September 4, 1992.

Howard M. Smolkin,

Executive Director.

[FR Doc. 92-21717 Filed 9-9-92; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Parts 571 and 588

[Docket No. 74-09; Notice 26]

RIN 2127-AD46

Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule amends Standard 213, *Child Restraint Systems*, to require manufacturers of child restraints to provide a postage paid registration form with each seat. The rule also amends the standard to require manufacturers to provide information to purchasers about the importance of registering the restraint, as well as information necessary to enable subsequent owners to register the restraint. In addition to amending Standard 213, this rule adds new regulations that require manufacturers to keep records of the names and addresses of persons who have returned a registration form.

These requirements will improve the effectiveness of manufacturer campaigns to recall child restraints that contain a safety-related defect or fail to conform to Standard 213 by requiring manufacturers to take steps that will increase their ability to inform owners of particular child restraints about defects or noncompliances in those restraints and by encouraging child restraint owners to register their restraints. The requirements will also assist NHTSA in determining whether a child safety seat manufacturer has complied with its notification responsibilities established by the National Traffic and Motor Vehicle Safety Act.

This rulemaking proceeding commenced in response to a December 1989 petition for rulemaking from the Center for Auto Safety and Consumer Action of San Francisco.

DATES: The amendment is effective on March 9, 1993.

Petitions for reconsideration of the final rule must be received by October 13, 1992.

ADDRESSES: Petitions for reconsideration should refer to the docket number and notice number of notice and be submitted to: Administrator, room 5220, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dr. George Mouchahoir, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590. Telephone: (202) 366-4919.

SUPPLEMENTARY INFORMATION:

General Introduction

This rule amends Standard 213 to establish a registration program for child restraint systems. The rule requires manufacturers to provide a standardized, postage-paid registration form with each restraint system. Manufacturers of built-in restraints installed in new vehicles are excluded from the requirement because the manufacturers are able to identify the vehicle owners through motor vehicle registration files and directly notify them of a recall concerning the build-in restraints.

The rule standardizes the text and layout of the registration form to increase the likelihood that a purchaser will register the restraint. On each form, manufacturers must preprint their return address, along with information identifying the model name or number of the restraint to which the form is attached. The form must be attached to the restraint to ensure that a purchaser will notice the form.

This rule also requires manufacturers to keep records of the names and addresses of persons who have returned a registration form. The manufacturers must maintain the record for at least six years from the date of manufacture of the seat.

NHTSA proposed the registration program in a notice of proposed rulemaking (NPRM) published on February 19, 1991 (56 FR 6603). Today's rule differs from the NPRM in various respects. The registration form is simplified. The labeling on the restraint must include both an address and a telephone number for the manufacturer. Cost estimates are slightly higher. The recordkeeping requirement of six years from the restraint's date of manufacture is two years less than was proposed. These and other changes are discussed further below.

This rule is intended to improve the percentage of recalled restraints that are fixed in a recall campaign for a noncompliance or defect. During 1981–1991, almost 18 million child restraints were recalled. During this period, about 13 percent of the child restraints involved in completed recall campaigns were reported as "campaigned units." Campaigned units refer to those child restraints that were reported remedied as well as those restraints either removed from sale to the public or removed from use by the public. (During 1981–1989, approximately 6 million restraints were recalled. About 10.5 percent of the restraints involved in completed recall campaigns were reported as campaigned units during this period. During 1990–1991, almost 12 million child restraints were recalled. Only about 11 percent of the restraints involved in completed recall campaigns were reported as campaigned during this period.) In general, this indicates that the child restraint campaign rate is considerably lower than the campaign rate for motor vehicles (60.5 percent for 1981–1991).

(At the time of the NPRM, the child restraint average campaign completion rate was 22 percent. That rate reflected the number of seats that had been campaigned at the time of the NPRM. During the period 1990–1991, the average campaign completion rate increased to about 27 percent.) It should be noted that, even though the average campaign completion rate averaged about 27 percent during 1990–1991, for all campaigns in aggregate only about 11 percent of the restraints involved in completed recall campaigns were reported as campaigned.

The low response rate for child restraints does not seem a consequence of a lack of interest in recalls on the part of the owners. The public responded overwhelmingly to a December 1989 press conference by CAS on child seat recalls by calling NHTSA. In the eight months following that press conference, NHTSA's Auto Safety Hotline received over 30,000 calls from concerned parents asking about recalls and the safety of child seats. This intense interest in child safety indicates that many owners are highly motivated and would return a recalled seat for a remedy, if they knew it had been recalled. Stated differently, many owners might not have had the problem remedied because notification of the recall failed to reach them.

NHTSA proposed the registration program to improve the dissemination of the recall information directly to individual owners. In the past, efforts to improve notice of a recall focused on better disseminating the information indirectly, i.e., to the general public. The agency decided to change its focus to individual owners. If owners are directly notified that their seat is recalled, the response rate should increase.

Pursuant to a contract with the agency, National Analysts conducted a study of consumers' attitudes about the proposed registration program and other child safety issues during the time that the agency was developing the NPRM. A copy of the February 1991 report has been available in the docket. The researchers conducted four group interviews ("focus groups"). Two groups were interviewed in Orange, California and the other two in Philadelphia, Pennsylvania. The groups were comprised of people who acquired a child restraint new and who use the restraint with their child at least once a week. The participants were asked to evaluate five different registration forms, three of which corresponded exactly to the NPRM's alternative Figure 9a, options one through three. The alternatives differed in how they presented a motivational message for the registration form.

National Analysts reported that participants in all four groups were unanimous in their support for a registration program. National Analysts concluded that, based on the findings from the study, "the great majority of child safety seat buyers are likely to appreciate and respond to a recall registration program." The researchers reported that:

> Participants also indicated that they would be most likely to return a pre-addressed, postage-prepaid card with an uncluttered graphic design that clearly and succinctly communicates the benefits of recall registration, differentiates itself from a warranty registration card, and requires minimal time and effort on the participant's part. "Child Safety Seat Registration: The Consumer View." National Analysts, February 1991.

Comments on the Proposal

The agency received 22 comments on the NPRM, from manufacturers, researchers, church and consumer groups, state governments and private individuals. The overwhelming majority of the commenters supported a registration program. With the exceptions discussed below, the comments generally consisted of specific suggestions regarding the format and language of the form, the labeling on the restraint, and the recordkeeping part of the rule. Evenflo, Cosco and Chrysler Corporation (a manufacturer of built-in systems) expressed concerns about the effectiveness of registration programs. Evenflo and Cosco also had cost concerns, which will be discussed in the section on "Costs."

Evenflo believed that a registration program would not be effective. Evenflo indicated that a registration program for child restraints can be compared to the "mandatory" registration requirements that Congress in 1982 specifically provided that the agency could not apply to independent tire dealers. *See*, section 158(b) of the National Traffic and Motor Vehicle Safety Act of 1966. The mandatory registration program had required all tire dealers, including independent dealers, to obtain and send specified information (i.e., the purchaser's name and address, the dealer's name and address, and the identification numbers of the tires) to the tire manufacturer. ("Independent tire dealers" means tire dealers and distributors whose businesses are not owned or controlled by a tire manufacturer or brand name owner.)

Compliance with the mandatory registration was uneven. While virtually all tires on new vehicles were registered, about half of all replacement tires were registered. Independent dealers had registered only 20 percent of the requirement tires they sold.

With the goals of improving the registration rate for tires sold by independent dealers and lessening the burden on the dealers, Congress prohibited NHTSA from requiring those dealers to comply with the mandatory registration program. In place of the mandatory program for the dealers, Congress directed NHTSA to establish a voluntary tire registration process. In the voluntary process, which is in effect today, the independent tire dealer furnishes a standardized registration form to each purchaser after the dealer has first filled in the tire identification number on the form. Purchasers wishing to register their tire fill in their name and address on the form and mail the

completed form to the tire manufacturer. The form's postage is paid by the purchaser. The registration rate for the voluntary tire registration program is about 11 percent.

In response to Evenflo, NHTSA disagrees that the proposed registration process for child restraints is comparable to the mandatory program that had applied to independent tire dealers. In contrast, the proposed child restraint program has some similarities to the voluntary tire registration program that Congress directed NHTSA to adopt for the independent dealers. They are similar because in both cases, the semi-completed registration from is provided to the purchaser. Persons wishing to register their product may then do so by filling in their name and address and mailing the completed form to the restraint manufacturer.

However, even though similarities would exist between the two programs, NHTSA does not believe that the voluntary tire program is a good surrogate for what might happen in the child restraint program. First, in the child registration program: (a) Every child restraint will be provided with a registration form attached to it; and (b) every registration form will describe to purchasers why the form should be filled and returned to the child restraint manufacturer. As previously mentioned, even though registration rates for independent tire dealers was about 11 percent, a consumer survey indicated that only 22 percent of these dealers' customers had received registration forms from their dealers, and that over 80 percent of the independent dealers' customers did not remember the dealer explaining the reasons why the registration form should be returned to the manufacturer. Second, consumers seem to be far more likely to be concerned with child safety than with tires, and therefore, they are more apt to fill in a registration form on child restraints than on tires. Third, the child restraint registration form is postage paid, a feature that the National Analysts study showed should have a positive effect on registration rates. Other information also shows the positive effect of providing the postage. According to information from the Consumer Product Safety Commission, warranty cards are returned for chain saws at a rate of 20 to 30 percent without postage paid; 40 percent with postage paid. Because of these differences, NHTSA does not believe the voluntary tire registration program is a good surrogate for what might happen in the child registration program.

Several commenters said that the registration process would be more effective if it involved more the retailer who sells the restraint to the purchaser. The CAS suggested that the process should "require consumers to register the child restraint at time of purchase and as a condition of the sale." The Coalition for Consumer Health and Safety said that the registration form should be "returned to the retailer at the point of sale, instead of enclosed with the seat to be mailed in by the consumer." Advocates for Highway and Auto Safety also believed that the form should be completed by the consumer with the assistance of the retailer at the time of purchase.

The NPRM explained why the agency did not propose a seller registration process. The preamble stated:

> In deciding whether to propose mandating registration by sellers or a lesser alternative, the agency was mindful that the Vehicle Safety Act does not provide NHTSA with explicit authority to require mandatory registration of child safety seats—i.e., to require sellers to register all seat purchases. Because of these concerns, and because child safety seats are sold to the public through a complex distribution system involving the manufacturer, major warehouse distributors, local distributors, and a wide variety of retail outlets, NHTSA concluded that a registration program for seats would have a greater likelihood of success in actuel practice if the responsibility for registering were placed primarily on the manufacturer (to provide the card and registration information) and the first owner (to fill out the card and mail it) (56 FR 6604).

NHTSA continues to believe that mandatory registration would be undesirable for the reasons stated in the NPRM. Further, a comparison can be made to the tire registration program. Congress found mandatory tire registration to be overly burdensome for independent businesses. The manufacture, distribution and sale of child seats is accomplished through a complex distribution system involving numerous retail outlets, large and small. A mandatory registration program could impose substantial burdens on these retailers.

Chrysler expressed concerns about the need for registration. Chrysler stated, "we do question the need for and value of the proposed registration requirements, given that the agency's estimate for card return rate is about 20 to 40 percent, and no estimate is offered for the probable recall response rate." Chrysler also stated that, because the card return rate might be no higher than 20 to 40 percent, "the manufacturer should be allowed the flexibility to determine for each instance how owners are to be notified, taking into account the nature of the particular defect or cause of noncompliance." The agency does not have information that would indicate the potential reduction in injuries or fatalities resulting from a registration requirement. The NPRM requested comments about instances where a child was injured in a safety seat that had been recalled by the manufacturer, but not fixed before the accident. No information was provided. Nevertheless, the agency believes there is a need for registration, to improve the notice end of a recall campaign. Today's registration requirements standardize the form to increase the likelihood that the purchaser will register. Today's requirements will increase the likelihood that the registrant will hear of a recall and realize that the recall pertains to the seat. These requirements address the problems referred to by SafetyBeltSafe U.S.A. in its comment: "the vast majority of safety seat owners either do not learn of the recall/repair message; or * * * do not realize that publicized recall campaigns apply to them." These problems may have kept the recall response rate low.

Several factors might work to optimize the registration rate for the child restraint program. First of all, the public concern for child safety should have a decidedly positive effect on the return rate. Also, the child restraint registration form is conspicuous to the purchaser and is postage paid, features that should have a positive effect on registration rates.

With regard to flexibility, Chrysler implied that the registration program would obviate the need for public notice of a recall. NHTSA disagrees. Section 153(c)(3) of the Safety Act authorizes NHTSA to require the notification to be provided to known purchasers of the child restraint and to the general public. The agency anticipates that it would be appropriate to require public notice of the recall, in addition to direct notification of registrants, to ensure that notice is provided to the extent possible to owners who did not register, or to those whose address on registration records is not current or complete.

Cosco also had concerns about the program's effectiveness. Cosco said that the effectiveness of registration is lessened because "a significant number of restraints are passed down from family to family, sold in garage sales, etc."

NHTSA proposed the registration program keeping in mind that child restraints are frequently acquired "secondhand," as Cosco stated. To address that situation, the agency proposed labeling requirements to

inform secondhand owners how to register with the manufacturer. When the secondhand owners have registered, they can be directly notified by the manufacturer if the restraint is recalled. Thus, the purpose of the registration program would be fulfilled for secondhand owners through the labeling provisions.

The wording of the exclusion of built-in restraints has been slightly changed from the proposal. The proposal excluded "a built-in child restraint system installed in a vehicle by the vehicle manufacturer." The rule excludes a "factory-installed built-in child restraint system" from the registration requirements, and defines the term in S4 of Standard 213 as "a built-in child restraint system that was installed in a motor vehicle at the time of its delivery to a dealer or distributor for distribution." The change from the NPRM is intended only to simplify the wording of the requirements portion of the standard.

1. Standardized Registration Form

The NPRM proposed requirements to increase the likelihood that the purchaser will notice the form, fill it in and mail it.

Attached Form

The NPRM proposed that the form be attached to a "contactable surface" (the term is defined in S4) of the restraint so that the purchaser must, as a practical matter, notice and handle the form after purchasing the restraint and before putting it into use.

Several commenters addressed the proposal that the form be attached to a contactable surface. Evenflo said that "the location of the forms within the packaging or upon the product does not increase the likelihood of registration. Rather, it turns on the education of the consumer, their spare time and their ready access to the U.S. mail." In contrast, SafetyBeltSafe said having the form be attached so that the purchaser must actively detach it will make it less likely that the form will be lost.

National Analysts found that respondents in the focus group study indicated that seeing and handling the card are important to maximize registration rates:

> There is also strong support for the registration card's being attached to the seat in such a way that it cannot be used without first removing the card. It is thought particularly important for the card to be packaged separately from instructions, warranties and other material enclosed with the CSS [child safety seat]. Suggestions include directly attaching the card to the seat liner—although some question whether an adhesive tacky enough to securely attach to the seat would not leave the seat sticky—or attaching it by means of a plastic tie, similar to those used to attach price tags to clothes in department stores. "Make it so you can't rip it off but have to use scissors, because then you'll read it." (Participant's quotation emphasized in text.) (*Id.* at 29)

This rule adopts the requirement that the form must be attached to the child restraint. The National Analysts study indicates that the requirement will improve the likelihood that the form will be noticed and read by the purchaser. However, the rule permits the form to be attached to more surfaces than had been proposed. Under the NPRM, the only permissible surfaces were "contactable surfaces," i.e., surfaces contactable by a dummy's head or torso during a compliance test. Under the final rule, the form may be attached to any surface of the restraint that contacts any portion of the dummy when the dummy is positioned in the system in accordance with S6.1.2 of Standard 213. This change from the NPRM is made to allow more flexibility in selecting a location for attaching the form.

Under a contactable surfaces requirement, the form would have had to be attached to surfaces only contactable by a dummy's head or torso, since "contactable surface" in S4 is limited to head and torso contacts. Thus, attaching the form to parts of the seat cushion that contact the dummy's thighs would not have been allowed. Such a prohibition does not appear warranted, since attaching the form to surfaces other than "contactable" ones meets the goal of the requirement that the purchaser will notice and handle the form when detaching it.

Text and Format

The NPRM sought to standardize the text and format of the registration form to increase the likelihood that the purchaser will fill it in. The agency proposed a two-sided, two-part form that consisted of a motivational message and boxed statement (top part) and a postcard that the purchaser would fill in and mail (bottom part). NHTSA proposed the two-part form to ensure that the information on the form can be easily read, and that the allotted space for the purchaser's name and address would be sufficiently large to permit the easy, legible recording of all the necessary information.

Several commenters questioned the need to standardize the form. Cosco said that each manufacturer may have differing needs for the forms, which calls for flexibility. Ford Motor Company said that manufacturers should be allowed to use either a fold-over card or a two-part form, and that details of the proposed form should be optional to allow manufacturers the flexibility to design a form that would better facilitate the recording of the information from registrants.

In contrast, SafetyBeltSafe said that a definite, prescribed format is desirable because it "fits with the public image of important, official forms," which will encourage people to register.

NHTSA is requiring the form to be standardized to increase the likelihood that a purchaser will register. The National Analysts study showed that essentially the same text and format as those adopted in this rule were effective in presenting the necessary information legibly and eliciting a favorable response from the purchaser, factors, that are needed to maximize registration rates.

The focus groups widely and enthusiastically accepted the text and format of the parts of the form that did not vary among the proposed options (*id.* at 10–14). (The reaction to the part of the form that varied is also discussed below.) National Analysts found that the participants unanimously praised the boxed statement (top part of proposed Figure 9b—the address side of the form). "The boxed message * * * clearly and effectively communicates what are perceived to be the two most critical messages contained on the registration cards: That it is important * * * [and] [t]hat this is a recall registration, not a warranty card." *Id.* at 10.

The part of the form that the purchaser fills in (bottom part of proposed figure 9a, the product identification number and purchaser information side) was found to draw—

> A particularly positive response because it requires minimal information and effort to complete * * * CSS owners praise the fact that they are only required to fill in their name and address * * * There is a strong preference to have the serial, model number and manufacturing date preprinted on the card as indicated on the prototypes. Nearly all want the numbers printed on the card. They feel that is saves them the trouble of looking—and that *any* marginal addition of time and effort serves as a potential barrier to completion and return. *Id.* at 12–14.

The portion of the form indicating that the registration postcard is prestamped and preaddressed "is considered essential * * *. Reaction to this was uniformly enthusiastic." *Id.* at 12.

Because the focus groups' response to the text and format of the unvarying parts of the proposed form was extremely positive, NHTSA is requiring use of the text and format. Prescribing

the text and format has the added benefit of ensuring that commercial matters, such as marketing information, are excluded from the form. (In addition, the regulatory text expressly prohibits such information. See, S5.8(c).) If marketing information were allowed to be placed on the form, such information might cause purchasers to misidentify the registration form as a warranty card, which the agency seeks to avoid in view of National Analysts' finding that participants generally had negative feelings toward warranty registrations (*id.* at 14).

The rule prescribes the text and format for the motivational message, the part of the form that varied among the proposed options. National Analysts found that it is possible for the text and format of the message to elicit a negative response from the purchaser. The text for option two was widely criticized as appearing shallow or manipulative. *Id.* at 19. The text for option three was strongly criticized for its wording, tone and format. Focus group participants said that they would not read option three's message because of their dislike for the card. *Id.* at 20–22. These findings lead NHTSA to conclude that the text and format and text for the message must be prescribed so that the message itself does not discourage purchasers from registering.

The motivational message has elements that received general support in the National Analysts study. *Id.* at 28. The text is based on option 1, which received the most positive response in the focus group testing. *Id.* at 15. However, the focus groups found the text style of option 1 too hard to read. They preferred a bold print, and that the text be arranged in more of the "bullet" style of option 2. The agency has revised the format in accordance with those preferences.

The motivational message adopted today was suggested by National Analysts in its February 1991 report. National Analysts made the suggestion after evaluating the reaction of the focus groups to the messages proposed as options in the NPRM. Contrary to one commenter's belief, NHTSA did not receive National Analysts' suggestion for the "optimal" card until after the NPRM was developed. For that reason, the optimal card was not among those proposed in the NPRM. However, NHTSA placed the National Analysts report in the public docket when the NPRM was published, to make the card and the report publicly available for review. See, item number three in the NPRM docket, 74–09–N20.

One commenter suggested that the card should have a sentence in Spanish that directs the reader to a resource for a translated version of the registration form. The effect of such a requirement would be to require manufacturers to have forms available in Spanish. The burden of such a requirement on manufacturers does not appear warranted, for the reasons discussed in the agency's November 20, 1990 denial of Texas' petition for rulemaking on requiring Spanish instructions for child restraints. 55 FR 48262.

The focus group study showed that participants reacted favorably to the idea of being assured by the manufacturer that their names would not be placed on a mailing list if they registered their restraints. Although the agency is not restricting use of the names, it expects that manufacturers will respect owners' preferences that their names be kept separate from other customer lists.

This rule specifies a minimum size for the form so that the part to be returned to the manufacturer would be mailable as a postcard. That part of the form, i.e., the postcard part, and the part of the form to which the postcard is attached must both be not less than 3½ by 5 inches, and have a thickness of not less than 0.007 inches and not more than 0.0095 inches. These dimensions are taken from postal regulations for cards mailable without envelopes under first class postage.

2. Labeling Requirements

The NPRM proposed requirements to enable owners of secondhand restraints to register. The NPRM proposed that each restraint (other than factory-installed built-in ones) must be permanently labeled with information about the importance of registration, and instructions for telephoning or mailing the necessary registration information to the manufacturer. In addition, the labeling would have to include information about NHTSA's Auto Safety Hotline. The proposal also included requirements that the registration information be provided in the printed instructions that accompany the restraint.

Several commenters said that the proposed labeling is too long for the limited space available on the restraint, or has words that imply that the restraint is unsafe. NHTSA has shortened and revised the message in response to those comments. Some commenters suggested a new text and format and other changes (e.g., using a triangular warning symbol) that they believe would more effectively urge the purchaser to register. The agency reviewed the suggestions, but could not conclude that the suggestions improved what had been proposed, tested in the focus groups and revised for this rule.

Fisher Price said that labeling the NHTSA Hotline number is unnecessary since the owner can contact the manufacturer about recalls. The agency disagrees. The Hotline number is necessary to increase the public's awareness of that recall information resource. Also, consumer complaints to the Hotline have historically provided NHTSA an important source of data on safety-related defects. For that reason, the agency requires vehicle manufacturers to include the Hotline in the vehicle owner's manual. See, 49 CFR part 575. NHTSA is requiring the Hotline number on each child restraint to ensure that the Hotline can be readily used by each owner, even persons owning secondhand restraints that are missing the instructions.

This rule also requires manufacturers to provide a mailing address and telephone number on the label. The NPRM proposed either an address or telephone number, but several commenters said that both should be required to enable the owner to contact the manufacturer in more than one way. The CAS said that two companies (Virso/Pride-Trimble and Century) recently changed their toll-free telephone numbers which made it more difficult for owners to contact the companies. CAS stated, "Requiring *both* company address and telephone number will help consumers get the information they need." NHTSA is requiring both an address and telephone number to make it easier for a person to register.

Readers should note that Standard 213's labeling requirements are further amended by a final rule published elsewhere in today's edition of the **Federal Register**. That rule-making relates to a warning label requirement in the standard. In addition, NHTSA published an NPRM to amend certain labeling and other requirements for built-in restraint systems (57 FR 870; January 9, 1992). Any amendments that might ultimately be adopted based on the January 1992 notice may modify existing labeling requirements, including the requirements adopted today.

3. Recordkeeping

This rule establishes a new part 588 in title 49, CFR, to require manufacturers to establish a record of registrants and maintain this record for at least six years from the date of manufacture of the seat. The record includes the name and mailing address of each registrant, and the model name or number and date of manufacture (month, year) of the restraint.

The notice proposed an eight year period, but comments were requested on whether a shorter period, e.g., six years, should be required. Commenters were sharply divided about the recordkeeping requirement. Commenters suggested a length of recordkeeping ranging from four to 10 years.

The agency is adopting a six year requirement because NHTSA's records indicate that all restraints recalled to date were recalled within six years of the production date of the seat. (As stated above, during 1981–1991, almost 18 million child restraints were recalled. The average length of time between date of production and date of recall was about 28 months.) Some commenters said that a 10 year requirement is warranted because restraints more than 10 years old are still being used. NHTSA does not agree that those restraints, relatively few in number, justify recordkeeping for longer than six years, given the average age of recalled child restraints. NHTSA is concerned that a period longer than six years could impose an unwarranted recordkeeping burden on manufacturers.

Costs

The agency has revised its cost estimates for this rulemaking. The NPRM and preliminary regulatory evaluation (PRE) estimated that the rule would have an average cost impact of $0.25 to $0.31 per seat. The estimated cost was $0.13 to $0.19 for high volume sales, $0.33 to $0.39 for medium volume sales, and $0.93 to $0.99 for low volume sales. The estimate included the cost for providing and attaching the registration form, labeling the restraint, recordkeeping, and providing postage. The ranges in the cost estimate were based on a 20 percent to 40 percent return rate for the forms.

Evenflo and Cosco disagreed with NHTSA's cost estimates. Evenflo said that the estimated cost for the low volume manufacturer was too low. Evenflo also said that the agency's estimate does not account for the cost doubling or tripling for each level of the distribution chain through which the restraint passes. "The ultimate cost to the consumer (assuming that the cost is passed on the consumer) will actually be three to ten times the estimated $1 cost."

Cosco said that the agency's estimated costs are too low. Cosco believed that the true manufacturing costs would be about $1.00 per seat. "This cost translates into a retail price increase of as much as 10% for the moderately priced restraints and considerably more than that for lower-priced booster seats and infant-only restraints, which very well might result in lower purchases of new car seats."

NHTSA contacted Evenflo and Cosco for information about their cost estimates. Evenflo provided information showing some of the basis for its estimate. Cosco did not.

The agency used the information from Evenflo to revise the cost estimates. The final regulatory evaluation for this rule discusses the cost estimates in detail. The evaluation, available in the docket, explains that NHTSA did not agree with some of Evenflo's assumptions about costs. For example, the manufacturer's estimate for postage costs was very high. However, Evenflo's information enabled NHTSA to estimate that the rule will cost $0.47 to $0.52 per restraint for high volume manufacturers, and $0.95 to $1.26 for medium volume manufacturers. These costs are based on a manufacturing cost of $0.20 to $0.22 per restraint for high volume manufacturers, and $0.40 to $0.53 for medium volume manufacturers. The agency determined the retail cost increase based on Evenflo's information that the markup from manufacturing cost to retail price is 2.37 times.

These costs were based on a 30 to 40 percent return rate for the forms. The agency has decided to change the estimated return rate for the child restraint registration forms from 20 to 40 percent in the NPRM, to 30 to 40 percent, since, as explained above, the percentage of the remedied seats has increased.

Nomenclature Unchanged

The NPRM proposed nomenclature change to Standard 213, to replace the term "child restraint system" with "child safety seat." Two commenters supported the change. About nine commenters ranging from manufacturers to researchers to safety groups adamantly opposed it. Many of the commenters opposing the change said the term child safety seat could mislead consumers into believing that the device will provide absolute protection in a crash. Manufacturers said that such an expectation of absolute protection could result in severe liability implications for them in the event a child is injured or killed in the device. Some commenters said that the term child safety seat is not descriptive enough to make clear that it covers devices such as car beds, vests and harnesses. As a result, the term would be confusing in Standard 213.

By proposing the nomenclature change, the agency sought to get consumers to better understand the importance of the seat to the child's safety in the automobile and on aircraft. NHTSA did not intend to change manufacturers' potential legal liability, nor did NHTSA intend to unsettle or confuse the current understanding concerning which devices are included within the term "child restraint systems." While the effectiveness of child restraints is beyond question in view of data indicating they reduce a child's risk of death or serious injury by 70 percent, the agency agrees that the proposed nomenclature change could be confusing, and defers to commenters' assessment that the change might have unintended, undesirable effects on manufacturers' legal liability. NHTSA is therefore retaining the term "child restraint system" in Standard 213.

The final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291. This rule is "significant" within the meaning of the Department of Transportation's regulatory policies and procedures because of the public and Congressional interest in improving recall campaigns involving child restraint systems. The final regulatory evaluation (FRE) of this rule describes the economic and other effects of the rulemaking action in detail. The FRE can be obtained from NHTSA's Docket Section.

To briefly summarize the FRE, the agency estimates that the average cost increase per child restraint will be $0.80. With sales of 4.5 million child restraints per year, the total cost increase will be $3.6 million per year. The agency believes that the child restraint registration program will result in a higher percentage of child restraints with noncompliances or defects being fixed, which in turn could result in lower

injury rates. However, the agency cannot estimate what the potential reduction in injuries or fatalities might be as a result of the registration program.

Regulatory Flexibility Act

NHTSA has considered the impact of this rulemaking action under the Regulatory Flexibility Act. I certify that this rule would not have a significant economic impact on a substantial number of small entities. With regard to businesses, there are approximately 11 manufacturers of child restraint systems. Of these, at most only six might be considered small businesses. These businesses do not comprise a substantial number of small entities that are affected by this rule.

Regardless of the number of small businesses, the rule will not have a significant economic impact on these entities. Infant seats range in cost between $20 and $82, with most costing about $30. Convertible seats (which are designed for use by both an infant and toddler) range in cost between $45 and $120, with most costing about $50. If the entire $0.80 cost of the rule were added to the cost of the restraint, the typical infant restraint would increase in price by only 2.7 percent and the typical convertible seat, by only 1.6 percent. Small organizations and governmental jurisdictional might be affected by the rule if these entities procure child restraint systems for programs such as loaner programs. Evenflo commented that fewer child restraints will be purchased in loaner programs if the cost of the restraint is increased due to the rule. While the cost of the restraint could increase, loaner program procurements would not be significantly affected. A program that had a fixed amount of money would have its procurements reduced by only 1.6 to 2.6 percent. Thus, regardless of the number of small organizations and governmental jurisdictions, NHTSA concludes the rule will not have a significant economic impact on these entities.

Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

The recordkeeping requirements associated with this rule have been submitted to the Office of Management and Budget (OMB) for approval, in accordance with 44 U.S.C. Chapter 35, under OMB No. 2127–0511; Administration: National Highway Traffic Safety Administration; Title 49 CFR § 571.213, Child Restraint Systems; Need for Information: To improve manufacturers' ability to contact owners in a recall campaign, to provide NHTSA a means of determining whether the manufacturer has complied with the recall responsibilities of the Vehicle Safety Act; Use of Information: Manufacturers will use the information to identify the owner of a recalled child restraint system and to notify them directly that the system has been recalled, NHTSA will use the information to determine whether the manufacturer has provided notice of a recall to owners of a defective or noncomplying restraint; Frequency: On occasion; Burden Estimate: 133,000 hours; Respondents: Manufacturers; Form(s): None; Average Burden Hours Per Respondent: 1.05 minutes. For further information contact: The information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, D.C. 20590, (202) 366–4735, or Edward Clark, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395–7430.

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

49 CFR Part 588

Reporting and recordkeeping requirements.

PART 571—[AMENDED]

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as set forth below.

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.213 [Amended]

2. S4 is amended by adding in a alphabetical order the following definition:

Factory-installed built-in child restraint system means a built-in child restraint system that was installed in a motor vehicle at the time of its delivery to a dealer or distributor for distribution.

3. S5.5.1 is revised to read as follows:

* * * * *

S5.5.1 Each add-on child restraint system shall be permanently labeled with the information specified in S5.5.2 (a) through (m).

* * * * *

4. S5.5.2 is amended by revising the introductory paragraph, by redesignating and republishing the existing text in paragraph (m) as paragraph (n) and by adding new paragraph (m), to read as follows:

* * * * *

S5.5.2 The information specified in paragraphs (a) through (m) of this section shall be stated in the English language and lettered in letters and numbers that are not smaller than 10 point type and are on a contrasting background.

* * * * *

(m) The following statement, inserting an address and telephone number: "Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address and the restraint's model number and manufacturing date to (*insert address*) or call (*insert telephone number*). For recall information, call the U.S. Government's Auto Safety Hotline at 1–800–424–9393 (202–366–0123 in D.C. area)."

(n) Child restraint systems that are certified as complying with the provisions of section S8 shall be labeled with the statement "This Restraint is Certified for Use in Motor Vehicles and Aircraft." This statement shall be in red lettering, and shall be placed after the certification statement required by paragraph (e) of this section.

* * * * *

5. S5.5.4 is revised to read as follows:

* * * * *

S5.5.4 Each built-in child restraint system shall be permanently labeled with the information specified in S5.5.5 (a) through (j) so that it is visible when the seat is activated for use as specified in S5.6.2, and, except a factory-installed built-in restraint, shall be permanently labeled with the information specified in S5.5.5(k).

* * * * *

6. S5.5.5 is amended by revising the introductory text and adding paragraph (k) to read as follows:

* * * * *

S5.5.5 The information specified in paragraphs (a) through (k) of this section shall be stated in the English language

and lettered in letters and numbers that are not smaller than 10-point type and are on a contrasting background. The information specified in paragraphs (a) through (j) shall be printed in the vehicle's owner's manual.

* * * * *

(k) The following statement, inserting an address and telephone number: "Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address and the restraint's model number and manufacturing date to (*insert address*) or call (*insert telephone number*). For recall information, call the U.S. Government's Auto Safety Hotline at 1–800–424–9393 (202–366–0123 in D.C. area)."

* * * * *

7. S5.6 would be amended by adding paragraphs S5.6.1.7 and S5.6.2.2, to read as follows:

S5.6 *Printed instructions for proper use.*

* * * * *

S5.6.1.7 The instructions shall include the following statement, inserting an address and telephone number: "Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address and the restraint's model number and manufacturing date to (*insert address*) or call (*insert telephone number*). For recall information, call the U.S. Government's Auto Safety Hotline at 1–800–424–9393 (202–366–0123 in D.C. area)."

* * * * *

S5.6.2.2 The instructions for each built-in child restraint system, except a factory-installed restraint, shall include the following statement, inserting an address and telephone number: "Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address and the restraint's model number and manufacturing date to (*insert address*) or call (*insert telephone number*). For recall information, call the U.S. Government's Auto Safety Hotline at 1–800–424–9393 (202–366–0123 in D.C. area)."

* * * * *

8. A new paragraph S5.8 is added to § 571.213 to read as follows:

* * * * *

S5.8 Information requirements—registration form.

(a) Each child restraint system, except a factory-installed built-in restraint system, shall have a registration form attached to any surface of the restraint that contacts the dummy when the dummy is positioned in the system in accordance with S6.1.2 of Standard 213.

(b) Each form shall:

(1) Consist of a postcard that is attached at a perforation to an informational card;

(2) Conform in size, content and format to Figures 9a and 9b of this section; and

(3) Have a thickness of at least 0.007 inches and not more than 0.0095 inches.

(c) Each postcard shall provide the model name or number and date of manufacture (month, year) of the child restraint system to which the form is attached, shall contain space for the purchaser to record his or her name and mailing address, shall be addressed to the manufacturer, and shall be postage paid. No other information shall appear on the postcard, except identifying information that distinguishes a particular child restraint system from other systems of that model name or number may be preprinted in the shaded area of the postcard, as shown in figure 9a.

9. The following figures 9a and 9b are added to the end of § 571.213:

BILLING CODE 4910-59-M

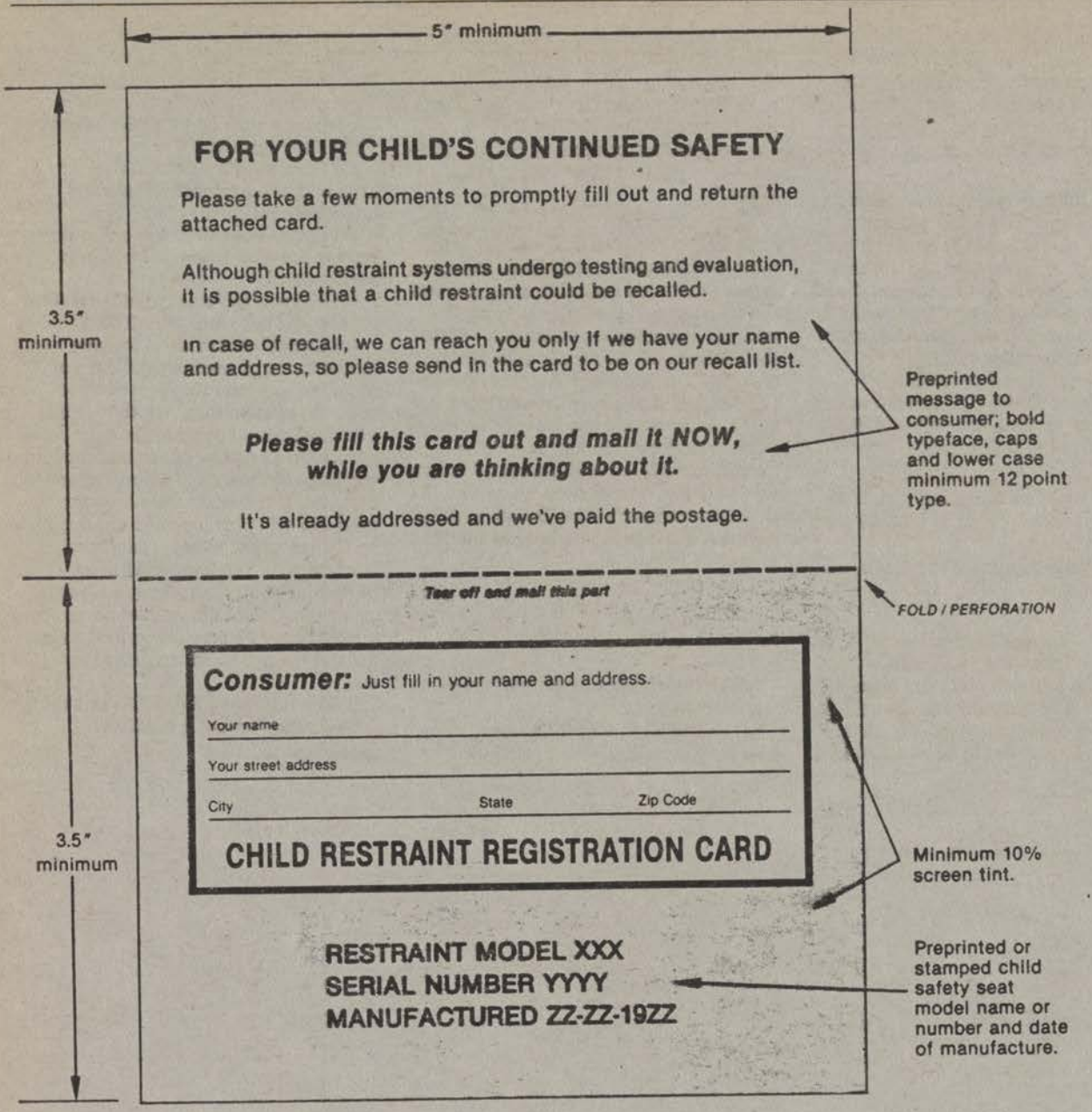

Figure 9a—Registration form for Child Systems—Product Identification Number and Purchaser Information Side.

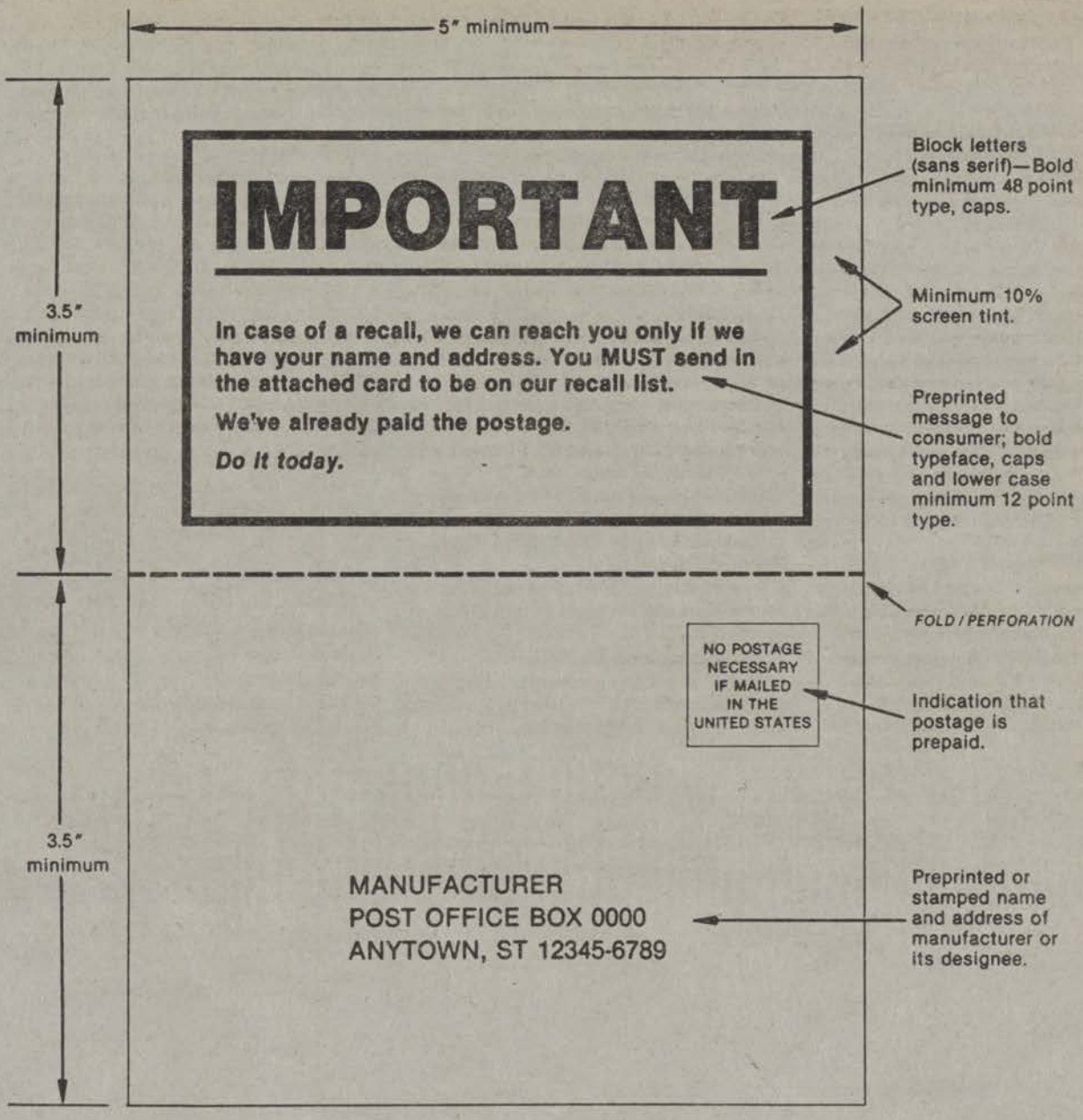

Figure 9b—Registration form for Child Restraint Systems—address side.

BILLING CODE 4910-59-C

1. Chapter V, title 49, Transportation, the Code of Federal Regulations, is amended by adding the following new Part:

PART 588—CHILD RESTRAINT SYSTEMS RECORDKEEPING REQUIREMENTS

Secs.
588.1 Scope.
588.2 Purpose.
588.3 Applicability.
588.4 Definitions.
588.5 Records.
588.6 Record retention.

Authority: 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50.

§ 588.1 Scope.

This part establishes requirements for manufacturers of child restraint systems to maintain lists of the names and addresses of child restraint owners.

§ 588.2 Purpose.

The purpose of this part is to aid manufacturers in contacting the owners of child restraints during notification campaigns conducted in accordance with 49 CFR part 577, and to aid the National Highway Traffic Safety Administration in determining whether a manufacturer has met its recall responsibilities.

§ 588.3 Applicability.

This part applies to manufacturers of child restraint systems, except factory-installed built-in restraints.

§ 588.4 Definitions.

(a) *Statutory definitions.* All terms defined in section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391) are used in their statutory meaning.

(b) *Motor Vehicle Safety Standard definitions.* Unless otherwise indicated, all terms used in this part that are defined in the Motor Vehicle Safety Standards, part 571 of this subchapter (hereinafter "the Standards"), are used as defined in the Standards.

(c) *Definitions used in this part.*

Child restraint system is used as defined in S4 of 49 CFR 571.213, *Child Restraint Systems.*

Factory-installed built-in child restraint system is used as defined in S4 of 49 CFR 571.213.

Owners include purchasers.

Registration form means the form provided with a child restraint system in compliance with the requirements of 49 CFR 571.213, and any communication from an owner of a child restraint to the manufacturer that provides the restraint's model name or number and the owner's name and mailing address.

§ 588.5 Records.

Each manufacturer, or manufacturer's designee, shall record and maintain records of the owners of child restraint systems who have submitted a registration form. The record shall be in a form suitable for inspection such as computer information storage devices or card files, and shall include the names and mailing addresses of the owners, and the model name or number and date of manufacture (month, year) of the owners' child restraint systems.

§ 588.6 Record retention.

Each manufacturer, or manufacturer's designee, shall maintain the information specified in § 588.5 of this part for a registered restraint system for a period of not less than six years from the date of manufacture of that restraint system.

Issued on September 4, 1992.

Howard M. Smolkin,

Executive Director.

[FR Doc. 92-21716 Filed 9-9-92; 8:45 am]
BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 57, No. 176
Thursday, September 10, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-CE-47-AD]

Airworthiness Directives; British Aerospace, Regional Aircraft Limited, HP 137 Mk1, Jetstream Models 200, 3101, and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede Airworthiness Directive (AD) 91-15-08, which currently requires repetitive replacement of the engine power lever control cables on British Aerospace (BAe), Regional Aircraft Limited, HP 137 Mk1, Jetstream Models 200, 3101, and 3201 airplanes. Higher fatigue strength cables have been designed since AD 91-15-08 became effective and the Federal Aviation Administration (FAA) has determined that proper installation of these cables would eliminate the need for the repetitive cable replacements. The proposed action would incorporate this option into the current AD. The actions specified by the proposed AD are intended to prevent the loss of engine power control caused by engine power lever control failure.

DATES: Comments must be received on or before November 25, 1992.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-47-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is applicable to this AD may be obtained from British Aerospace, Regional Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; Telephone (44-292) 79888; Facsimile (44-292) 79703; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC, 20041; Telephone (703) 435-9100; Facsimile (703) 435-2628. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium; Telephone (322) 513.38.30 ext. 2710; Facsimile (322) 230.68.99; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932; Facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-CE-47-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-47-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion: AD 91-15-05, Amendment 39-7071 (56 FR 32075, July 15, 1991), currently requires repetitive replacement of the engine power lever control cables on BAe HP 137 Mk1, Jetstream Models 200, 3101, and 3201 airplanes. The actions are required to be accomplished in accordance with BAe Service Bulletin (SB) 76-A-JA 910542, dated May 30, 1991. This AD is a result of reports that two of the affected airplanes experienced engine power lever control cable failure during ground operation and that over 100 cable replacements have occurred on the affected airplanes because of broken wire strands within the cables.

Since AD 91-15-08 became effective, BAe has designed higher fatigue strength engine power lever control cables. The FAA has determined that the proper installation of these improved cables eliminates the need for the repetitive cable replacements required by AD 91-15-08.

BAe has issued Service Bulletin 76-JA 911042, dated May 15, 1992, which specifies procedures for installing higher fatigue strength engine power lever control cables on certain BAe HP 137 Mk1, Jetstream Models 200, 3101 and 3201 airplanes.

The Civil Aviation Authority (CAA) classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop in other BAe HP 137 Mk1, Jetstream Models 200, 3101, and 3201 airplanes of the same type design, the proposed AD would supersede AD 91–15–08 with a new AD that would (1) retain the repetitive replacements of the engine power lever control cables that are currently required by AD 91–15–08; and (2) incorporate the option of installing higher fatigue strength engine power lever control cables as terminating action for the repetitive cable replacements. Higher fatigue cable replacements would be required to be accomplished in accordance with BAe SB 76–JA 911042, dated May 15, 1992. The repetitive replacements would be required to be accomplished in accordance with BAe SB 76–A–JA 910542, which incorporates the following pages:

Pages	Revision level	Date
1–3	Revision 1	May 25, 1992.
4–11	Original	May 30, 1991.

The FAA estimates that 233 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 21 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Replacement cables (not the higher fatigue strength cables) would be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $269,115. The only difference between the proposed action and AD 91–15–08 is the option of eliminating the repetitive replacements if higher fatigue strength engine power lever control cables are installed. Since the installation of these higher fatigue strength cables is not required, the proposed AD imposes no additional cost impact upon U.S. operators than that which is already required by AD 91–15–08.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 91–15–08, Amendment 39–7071 (56 FR 32075, July 15, 1991), and by adding the following new airworthiness directive:

British Aerospace, Regional Aircraft Limited: Docket No. 92–CE–47–AD. Supersedes AD 91–15–08, Amendment 39–7071.

Applicability: Jetstream HP 137 Mk1, Models 200, 3101, and 3201 airplanes (all serial numbers), certificated in any category.

Compliance: Required initially as follows, unless already accomplished (superseded AD 91–15–08), and thereafter at intervals not to exceed 10,000 landings:

- For airplanes with less than 9,500 landings on the effective date of this AD, prior to the accumulation of 10,000 landings.
- For airplanes with 9,500 landings or more but less than 10,000 landings on the effective date of this AD, prior to the accumulation of 10,500 landings.
- For airplanes with 10,000 or more landings but less than 12,000 landings on the effective date of this AD, within the next 500 landings.
- For airplanes with 12,000 or more landings but less than 15,000 landings on the effective date of this AD, within the next 150 landings.
- For airplanes with over 15,000 landings on the effective date of this AD, within the next 50 landings.

Note 1: If no record of landings is maintained, hours time-in-service (TIS) may be used with one hour TIS equal to two landings. For example, 100 hours TIS is equal to 200 landings.

To prevent the loss of control of engine power, accomplish the following:

(a) Replace the engine power lever control cables (all 8) in accordance with the Accomplishment Instructions section of British Aerospace (BAe) Service Bulletin (SB) 76–A–JA 910542, which incorporates the following pages:

Pages	Revision level	Date
1–3	Revision 1	May 25, 1992.
4–11	Original	May 30, 1991.

(b) The repetitive replacements required by this AD may be terminated if the engine power lever control cables (all 8) are replaced with higher fatigue strength engine power lever control cables, part number 1379164E408, in accordance with the Accomplishment Instructions section of BAe SB 76–JA 911042, dated May 15, 1992.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Office.

(e) All persons affected by this directive may obtain copies of the documents referred to herein upon request to British Aerospace, Regional Aircraft Limited, Manager Product Support, Commercial Aircraft Airlines Division, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC, 20041; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment supersedes AD 91–15–08, Amendment 39–7071.

Issued in Kansas City, Missouri, on September 3, 1992.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–21824 Filed 9–9–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 92-AGL-13]

Proposed Transition Area Establishment; Princeton, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area to be located at Princeton, MN, to accommodate a new nondirectional beacon (NDB) runway 15 Standard Instrument Approach Procedure (SIAP) to Princeton Municipal Airport, Princeton, MN. The intended effect of this action is to ensure segregation of the aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. If adopted, this proposal would change the airport status from visual flight rules (VFR) only to include operations under instrument flight rules (IFR).

DATES: comments must be received on or before October 26, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Attn: Rules Docket No. 92-AGL-13, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL.

An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL, 60018, telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-AGL-13". The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, IL, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area located at Princeton, MN, to accommodate a new NDB runway 15 SIAP to Princeton Municipal Airport, Princeton, MN. If this proposal is adopted, the status of the airport would change from VFR only, to include IFR operations.

The development of the procedure requires that the FAA establish the designated airspace to ensure that the procedure would be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Transition areas are published in § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that the rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Incorporation by reference, Transition Areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106 (g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

AGL MN TA Princeton, MN [New]
Princeton Municipal Airport, MN
(lat. 45° 33' 40" N, long 93° 36' 32" W)
Princeton NDB
(lat. 45° 33' 51" N, long 93° 36' 24" W)

That airspace extending upward from 700 feet above the surface within a 6.4 nautical mile radius of the Princeton Municipal Airport, and within 2.5 nautical miles each side of the 332° bearing from the Princeton

NDB extending from the 6.4 nautical mile radius to 7 nautical miles northwest of the airport.

* * * * *

Issued in Des Plaines, IL on August 28, 1992.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 92-21698 Filed 9-9-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 92-AGL-12]

Proposed Transition Area Establishment; Silver Bay, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area to be located at Silver Bay, MN, to accommodate a new nondirectional beacon (NDB) runway 25 Standard Instrument Approach Procedure (SIAP) to Silver Bay Municipal Airport, Silver Bay, MN. The intended effect of this action is to ensure segregation of the aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. If adopted, this proposal would change the airport status from visual flight rules (VFR) only to include operations under instrument flight rules (IFR).

DATES: Comments must be received on or before October 26, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Attn: Rules Docket No. 92-AGL-12, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL.

An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL, 60018, telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-AGL-12". The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, IL, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area located at Silver Bay, MN, to accommodate a new NDB runway 25 SIAP to Silver Bay Municipal Airport, Silver Bay, MN. If this proposal is adopted, the status of the airport would change from VFR only, to include IFR operations.

The development of the procedure requires that the FAA establish the designated airspace to ensure that the procedure would be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Transition areas are published in § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that the rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7,

Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

AGL MN TA Silver Bay, MN [New]
Silver Bay Municipal Airport, MN
(lat. 47°14'55" N, long 91°24'55" W)

That airspace extending upward from 700 feet above the surface within a 7 nautical mile radius of Silver Bay Municipal Airport.

* * * * *

Issued in Des Plaines, IL on August 28, 1992.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 92-21699 Filed 9-9-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-AGL-17]

Proposed Modification of Transition Area; Toledo, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the existing Toledo, Ohio transition area to accommodate a new Standard Instrument Approach Procedure (SIAP) VOR/DME RNAV Runway 27 to Wood County Airport, Bowling Green, Ohio. The intended effect of this action is to ensure segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before October 26, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Attn: Rules Docket No. 92-AGL-17, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-AGL-17". The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the existing Toledo, Ohio, transition area to accommodate a new SIAP VOR/DME RNAV Runway 27 at Wood County Airport, Bowling Green, Ohio.

The FAA finds it necessary to alter the designated airspace to ensure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts would reflect the defined area which would enable other aircraft to circumnavigate the area is order to comply with applicable visual flight rule requirements.

Transition areas are published in § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore— (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., P. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published

April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

AGL OH TA Toledo, OH [Revised]
Wood County Airport, Bowling Green, OH
(lat. 41°23'27" N., long. 83°37'49" W.)

That airspace extending upward from 700 feet above the surface within the area bounded by a line beginning at lat. 41°40'00" N., long. 84°20'00" W.; to lat. 41°49'00" N., long. 83°37'00" W.; to 41°34'00" N., long. 83°19'00" W.; to lat. 41°17'00" N., long. 83°33'00" W., to lat. 41°22'00" N., long. 84°05'00" W. to the point of beginning.

* * * * *

Issued in Des Plaines, Illinois on August 31, 1992.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 92-21700 Filed 9-9-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-AGL-9]

Proposed Transition Area Establishment; East Troy, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area located at East Troy, WI, to accommodate a new VOR-A instrument approach procedure to East Troy Municipal Airport, East Troy, WI. The intended effect of this action is to ensure segregation of the aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. If adopted, this proposal would change the airport status from visual flight rules (VFR) only to include operations under instrument flight rules (IFR).

DATES: Comments must be received on or before October 21, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Attn: Rules Docket No. 92-AGL-9, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL.

An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL, 60018, telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-AGL-9". The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Avenue, Des Plaines, IL, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC, 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area located at East Troy, WI, to accommodate a new VOR-A instrument approach procedure to East Troy Municipal Airport, East Troy, WI. If this proposal is adopted, the status of the East Troy Municipal Airport would change for VFR only, to include IFR operations.

The development of this VOR-A procedure requires that the FAA establish the designated airspace to ensure that the procedure would be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Transition areas are published in § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389, 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

AGL WI TA East Troy, WI [New] East Troy Municipal Airport, WI
(lat. 42°47'48" N, long. 88°22'34" W)

That airspace extending upward from 700 feet above the surface within a 6.3 nautical mile radius of East Troy Municipal Airport; excluding the airspace within the Burlington, WI Transition Area.

* * * * *

Issued in Des Plaines, IL on July 14, 1992.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 92–21694 Filed 9–9–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–AGL–14]

Proposed Transition Area Alteration, Phillips, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the existing transition area to accommodate a new nondirectional beacon (NDB) runway 06 Standard Instrument Approach Procedure (SIAP) to Price County Airport, Phillips, WI. The intended effect of this action is to ensure segregation of the aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before October 23, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Attn: Rules Docket No. 92–AGL–14, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL.

An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL, 60018, telephone (312) 694–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–AGL–14". The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, IL, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the existing transition area airspace near Phillips, WI, to accommodate a new NDB runway 06 SIAP to Price County Airport, Phillips, WI.

The development of the procedure requires that the FAA alter the designated airspace to ensure that the procedure would be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Transition areas are published in § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that the rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects In 14 CFR Part 71

Aviation Safety, Incorporation by reference, Transition Areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

AGL WI TA Phillips, WI [Revised]
Phillips, Price County Airport, WI
(lat. 45° 42' 19"N, long 90° 24' 10"W)
Phillips NDB
(lat. 45° 42' 11"N, long 90° 24' 46"W)

That airspace extending upward from 700 feet above the surface within a 6.3 nautical mile radius of the Price County Airport, and within 1.9 nautical miles each side of the 227° bearing from the Phillips NDB extending from the 6.3 nautical mile radius to 7 nautical miles southwest of the airport; and within 1.9 nautical miles each side of the 060° bearing from the Phillips NDB extending from the 6.3 nautical mile radius to 7 nautical miles northeast of the airport.

* * * * *

Issued in Des Plaines, IL on August 27, 1992.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 92–21697 Filed 9–9–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 191

Drawback; Application for Exporter's Summary Procedure

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations by permitting drawback claimants to file only one application for use of the exporter's summary procedure, instead of filing separate applications for the use of the procedure for each Customs region or district in which they file drawback claims. This will reduce the paperwork burden on the affected public and the administrative burden on the Customs Service.

DATES: Comments must be received on or before October 13, 1992.

ADDRESSES: Comments (preferably in triplicate) must be submitted to and may be inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., room 2119, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Bruce Friedman, Office of Trade Operations, 202–927–0260.

SUPPLEMENTARY INFORMATION:

Background

Drawback is a refund or remission, in whole or in part, of a Customs duty, internal revenue tax, or fee. There are a number of different kinds of drawback authorized under law including, for example, manufacturing drawback, same condition drawback, and rejected merchandise drawback. In order to quality for drawback, there must be an exportation (in some cases, destruction is allowed as an alternative to exportation) of either the imported merchandise or articles manufactured or processed from the imported merchandise. For some kind of drawback, substitution for the imported merchandise is allowed so that what must be exported (or destroyed, in those cases where destruction is permitted as an alternative to exportation) is either the substituted merchandise or articles manufactured or processed from the substituted merchandise. The statute providing for drawback is found in section 313, Tariff Act of 1930, as amended (19 U.S.C. 1313).

Part 191, Customs Regulations (19 CFR part 191), contains the general regulations applicable to drawback claims and specialized provisions applicable to specific types of drawback claims. The general procedures for establishing exportation of merchandise or articles for drawback purposes are provided for in subpart E of part 191. This subpart authorizes the use of several alternative procedures to establish exportation. One of there alternative procedures is the exporter's summary procedure, provided for in § 191.53.

Under this procedure, a drawback claimant may request the permission of the regional commissioner (or the district director in the case of a same condition drawback claim when the regional commissioner has delegated authority to approve such requests to the district director) to use the procedure in the region or district where drawback claims will be filed. The regional commissioner or district director shall approve the request if he or she determines that use of the procedure will contribute to administrative efficiency and that the claimant is not delinquent or otherwise remiss in transactions with Customs.

If the application is approved, the claimant is required to obtain a bond to assure that Customs will be reimbursed if any improper payments of drawback are made. The claimant is then permitted to establish exportation for drawback purposes with the use of a chronological summary of exports in a format acceptable to the appropriate regional commissioner or district director. The claimant is also required to maintain complete and accurate records of exportation for at least 3 years after payment of the drawback claim, but is not required to file these records with Customs at the time of filing the drawback claim.

Currently, a drawback claimant who desires to use the exporter's summary procedure must apply, and be approved, for use of the procedure with each regional commissioner, or district director if appropriate, in whose region or district drawback will be claimed. This can result in unnecessary paperwork in that applications by the same claimant may have to be filed in several different regions and districts and to be processed in there regions and districts by Customs.

The exporter's summary procedure was established to reduce paperwork. Regions and districts may consult as to whether there is any reason that permission to use the procedure should be not be granted to a particular applicant. Therefore, Customs is proposing to change the exporter's summary procedure so that drawback claimants need not file separate applications for the procedure for each region or district in which they file drawback claims. Approval, denial, or revocation of a claimant's application to use the procedure would determine the claimant's eligibility to use the procedure in all regions and districts. Implementation of this nationwide procedure would be less burdensome on the trade community than the existing system and it would reduce the administrative burden of Customs.

In accordance with the above discussion, an amendment to paragraph (c) of § 191.53, Customs Regulations (19 CFR 191.53(c)), is being proposed.

Comments

Before adopting this proposal, consideration will be given to any written comments that are timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30

p.m., at the Regulations and Disclosure Law Branch, room 2119, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendment set forth in this document will not have a significant economic impact on a substantial number of small entities, inasmuch as it is merely reducing a filing requirement. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis is required.

Drafting Information

The principal author of this document was Paul Hegland, Entry Rulings Branch. However, personnel from other offices participated in its development.

List of Subjects in Part 191

Customs duties and inspection, Imports, Exports, Drawback.

Proposed Amendment

It is proposed to amend part 191, Customs Regulations (19 CFR part 191), as set forth below.

PART 191—DRAWBACK

1. The general authority citation for part 191 would continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1313, 1624. * * *

§ 191.53 [Amended]

2. It is proposed to amend § 191.53 by adding a new sentence at the end of paragraph (c) to read as follows:

§ 191.53 Exporter's summary.

* * * * *

(c) *Approval.* * * * Approval, denial, or revocation of the right to use this procedure by one region, or district in the case of merchandise the subject of same condition drawback, determines the eligibility of the claimant to use this procedure in all regions or districts.

* * * * *

Approved: August 26, 1992.

Carol Hallett,

Commissioner of Customs.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92-21678 Filed 9-9-92; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 626, 627, 628, 629, 630, 631, and 637

RIN 1205-AA

Job Training Partnership Act: Job Training Reform Amendments of 1992 Employment and Training Services for the Disadvantaged

AGENCY: Employment and Training Administration, Labor.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The purpose of this notice is to obtain comments on the areas of proposed regulatory change that relate to the department of labor's (Department of DOL) approach to implementing the Job Training Reform Amendments of 1992 Public Law 102-367 (September 7, 1992), which amends the Job Training Partnership Act (JTPA) (See Conference Report on H.R. 3033, the Job Training Reform Amendments of 1992, in the Congressional Record August 6, 1992, pp. H. 7646—H. 7686). Because of a tight implementation schedule for these changes, DOL has a need for early comment. A final rule is expected on or about December 18, 1992.

DATES: The Department invites written comments on this notice and will consider such comments at any time up to the publication of the Final Rule. To be most useful in the development of a Notice of Proposed Rulemaking, however, comments in response to this notice should be received on or before September 25, 1992. Comments received after that date will be considered in the development of the final rule.

ADDRESSES: Written comments shall be mailed to the Assistant Secretary for Employment and Training, Department of Labor, room N-4703, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Mr. Hugh Davies, Acting Director, Office of Employment and Training Programs. Commenters wishing acknowledgement of receipt of their comments must submit them by certified mail, return receipt requested.

FOR FURTHER INFORMATION CONTACT: Mr. Hugh Davies, Acting Director, Office of Employment and Training Programs. Telephone: (202) 535-0580 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Job Training Partnership Act (JTPA) was enacted in 1982 principally to establish a new program and delivery system of training and related assistance for economically disadvantaged youth and adults leading to permanent, private sector employment. Since the original enactment, the essential structure and design of the programs and activities under Titles I and II of JTPA have remained substantially the same. These programs have put together an impressive record of placement in jobs.

Ove the past few years, the JTPA system and JTPA programs have been the subject of extensive review and discussions. This process was largely initiated with an examination of the JTPA and its future by a JTPA Advisory Committee to the Secretary of Labor and has included extensive deliberations by the Congress. Throughout this review process there have been constructive comments and suggestions from a variety of parties, including business leaders, States, SDAs, labor organizations, community-based organizations, the Department's Office of the Inspector General, the General Accounting Office and others, with an interest in improving JTPA. Important topics of interest included how to identify and enroll those most in need of JTPA services, an emphasis on ways in which the program can maximize the delivery and effectiveness of training resources, and the broad areas of program administration improvements and integrity.

The culmination of this activity is the enactment of the Job Training Reform Amendments of 1992. The purposes of this Act are to improve the targeting or programs and resources to those facing serious barriers to employment, enhance the quality of services provided, strengthen fiscal and program accountability, and foster a comprehensive and coherent system of human resource services.

The Act and Regulations

The Department believes that in many instances the Act is sufficiently clear in setting forth requirements. The Department intends to limit regulations only to those areas in which they are specifically required by the Act or identified as necessary to provide guidance and clarification and to further the purposes of the Act. The Department intends that the regulations be sufficiently clear so that all parties with an interest in JTPA would understand

both the requirements and areas of flexibility inherent in the program.

The Job Training Reform Amendments require that the Secretary issue final implementing regulations by December 18, 1992. The Department has developed an ambitious schedule to meet this deadline, but intends to implement revisions to the JTPA regulations in an open and public manner and to solicit participation of all interested parties. This Advance Notice of Proposed Rulemaking initiates that process which will include opportunities for comment and other expressions of views. Other key points in the process of implementation are:

- Publication of a notice of proposed rulemaking on or about October 23, 1992.
- Issuance of final rules on or about December 18, 1992.
- Training of State and SDA staff on the provisions of the final rules during the period January—February 1993.
- The Job Training Reform Amendments of 1992 become effective July 1, 1993.

Framework for Implementation of the Amendments

The Department believes that certain principles are central to the JTPA and to the implementation of the Job Training Reform Amendments of 1992 amendments to the JTPA. These principles will be central to the Department's efforts to oversee and guide the implementation process including the development of regulations.

- An enhanced role for the private sector is key to an effective JTPA program. Building on their significant contribution to date, the Department wants to ensure that private sector leaders participate in JTPA private industry councils (PICs)—particularly in the design and operation of JTPA programs. This includes setting high standards for the content and acquisition of skills through training and linking training with job opportunities in the local and national labor market. The Department also wishes to assure that the PICs are full partners in the JTPA public-private planning and delivery system.
- Training services provided by JTPA should be of the highest quality and responsive to the needs of the individual participants. This is a cornerstone of the Job Training Reform Amendments of 1992, and is relevant to the findings and results of the JTPA Advisory Committee, the Secretary's Commission on Achieving Necessary Skills (SCANS) and the concepts embodied in the President's Job Training 2000 proposal. In issuing regulations, the Department wants to establish a framework under which the processes used to assess individuals and under which individuals are assigned to and receive training services—especially services required by the Act—will be most effective and efficient. At the same time, the Department recognizes that the JTPA system, within the framework of the Act and regulations, should be flexible and able to design and deliver programs to meet needs as they are determined locally.
- The JTPA performance standards will be the basic measure of the accomplishments of the JTPA system. In setting performance standards, the Department will encourage interventions, program strategies, and arrangements that enhance opportunities for long term employment and increase client earnings potential. The Department will also pursue cost effective reporting methods that quantify the results of these efforts.
- JTPA programs must meet the highest possible standards for the use of public funds. Substantial attention is given in the Job Training Reform Amendments of 1992 to strengthening program management, procurement, and fiscal and accountability standards for the JTPA system. The Department intends to advance fully the goals and implement the requirements placed in the Act for the Secretary to regulate in this area.
- JTPA and other human resource programs must have workable system of relationships to jointly serve their participants. There are a number of educational and training programs that provide services to disadvantaged individuals in addition to JTPA. It is unlikely that any single program will have the capacity to meet all the training, educational, and service needs of a participant. It will be the purpose of the Department to develop regulations that foster the development of joint relationships among programs in providing high quality services to individuals.

Regulatory Topics Which May Be of Special Interest to the JTPA System

In developing this Notice, the Department has undertaken a review of the Act, as amended, and the JPTA regulations to identify principal areas in which rulemaking my be necessary or desirable. In addition, the Department has received comments and suggestions from a variety of sources identifying areas in which policy direction my be necessary.

The Job Training Reform Amendments of 1992 contain revisions in titles I and II of the JTPA that may have relevance to the programs at title IV, sections 401 and 402. It is the Department's position that many of the Amendments have application to these nationally administered programs. Grantees under these national programs should review the entire Act, as amended, and this Advance Notice to determine how the provisions may apply to their programs.

In proposing regulations, the following areas may be addressed. All of the areas presented below will not necessarily be included in any final rulemaking as they are described. Other matters may be addressed that are either of a substantive or technical nature or the result of comments received as a result of this Advance Notice and during the rulemaking process.

The Department hereby requests comments on the areas listed below or on other areas of JTPA, as amended by the Job Training Reform Amendments of 1992. Comments should address specific proposed or recommended regulatory actions. Commenters are requested to identify the area of their comment by subject headings as listed below or as identified by the commenter. Comments are also requested as to possible recordkeeping and reporting requirements which might arise in connection with these proposals, and how we might keep these requirements at a minimum. The Department also requests comments on areas not listed.

A. Renew the Public-private Partnership by Providing for a Strengthened Private Industry Council Capacity and Role

1. Clarify and Reinforce the Role of the PIC with Regard to Program Development, Oversight, Coordination, Identifying Quality Job Opportunities and in Establishing Guidelines for the Level of Skills for Training Programs.

2. Guidance in Connection with the Requirements for PIC Membership.

3. Minimal Guidelines for the Governor's Certification of the PIC.

4. New requirements for the Periodic Validation of the PIC/Chief Elected Official Agreement.

B. Enhance Program Quality by Basing Training and Services on Individual and Labor Market Needs.

1. Guidance and Clarification on Activities and Services Including:

- The intake and enrollment process, the appropriate provision of services and activities, documentation requirements, and other related matters.
- Program requirements for assessment, development of service strategies, provision of required services (basic skills and occupational skills

training, and supportive services as identified) and referrals to other programs.

• Clarification of the requirement to provide or arrange for needed participant services including supportive services.

• Guidance on the conditions for the provision of job search assistance, job search skills training and job club activities.

• Requirements to ensure that women, minorities, and individuals with disabilities may benefit equitably from all JTPA program activities.

2. Requirements for Certain Authorized Program Activities (e.g., work experience, entry employment experience, case management services, skill upgrading and retraining, vocational exploration).

3. Guidelines and Standards Pertaining to On-the-Job Training (OJT) Including:

• Provisions to address issues and questions that have arisen in recent oversight activities such as reverse referrals, temporary employment, and extraordinary training costs.

• Conditions and specifications on OJT for out-of-school youth or summer youth.

4. Clarification of the Allowability, Requirements and Mechanisms for Certain Payments to Participants such as Allowances, Incentive Payments, Supportive Service Payments, Financial Assistance and Needs-based Payments.

5. Common Definitions That Might Apply across JTPA Programs Including All Programs under JTPA Title IV.

6. Clarification and Guidance on the New Requirements for Services to Older Workers.

C. Strengthen JTPA Program Outcomes.

1. Specifications and Standards To Apply in the Definition of Placement Including Possible Minimum Standards Pertaining to Hours Worked, Wages, or Other Criteria.

2. Clarification that the New Eligibility and Targeting Requirements Satisfy the Concept of "Most in Need" as Found in JTPA Sec. 141(a).

D. Improve Accountability by Raising Management and Fiscal Standards at all Levels of the JTPA System

1. Specification of Requirements and Standards for Procurement Systems.

• The extent of the requirements to be established by the Secretary and standards by the Governor regarding the establishment and maintenance of procurement systems consistent with the provisions of JTPA Sec. 164.

• Guidelines to be established by the Secretary for the selection of service providers (including community based organizations, proprietary schools and others), consistent with the provisions of JTPA Section 107.

• Guidelines on conflict of interest in the JTPA system with particular emphasis on PIC membership and issues of "actual and apparent" conflict of interest.

2. Rules Pertaining to program Income.

• Allowable uses of program income.

• Requirements with regard to the classification, availability and reporting of program income.

3. Monitoring System Requirements, including Minimum Elements, at the State, Local and Service Provider Levels.

4. Sanctions.

• The kinds of sanctions that may be applied by the Governor and the Secretary.

• The conditions under which sanctions will be applied by the Governor and the Secretary.

• The processes to be followed in applying sanctions.

5. The Adaptation of Allowable Cost Standards and Cost Principles Including the Extent to Which to Adopt Principles Generally Applicable to Recipients of Federal Grant Funds.

6. The Cost Limitations.

• Considerations in defining the cost categories.

• The application of the cost limitations to various JTPA programs.

• Determining compliance with the cost limitations.

• The exceptions to cost charging provided under JTPA Sec. 141(d)(3).

7. Requirements for Reporting Quarterly and by Year of Appropriation.

8. Recordkeeping.

• Requirements that relate to eligibility and the barrier provisions.

• Recordkeeping requirements quarterly and by year of appropriation.

• Tracking of stand-in costs (non-Federal costs that a recipient may seek to substitute for disallowed Federal costs) for purposes of JTPA allowability.

• Requirements that pertain to the derivation and use of program income.

• The need to maintain information on eligible applicants and referral of such eligible applicants to other programs and services.

9. Financial Liability and the Governor's Authority in Establishing Responsibility for Misexpenditure of JTPA Funds.

10. The Resolution of Questioned/Disallowed Costs and Debt Repayment.

• Conditions under which "stand-in" or substitute costs may be accepted for disallowed costs and standards for reprogramming of funds.

• Standards for application of offset under JTPA section 164(d) as a means of debt repayment.

11. The Federal Requirement That Should Apply with Regard to the Acquisition, Use and Disposition of Property.

12. The Complaint and Grievance System (Other than Discrimination Complaints).

• Differentiation between the Federal system of handling grievances, investigations and hearings and that at the State and local level.

• Incorporation of the new requirements as they pertain to complaints pursuant to JTPA Sec. 143.

13. Clarification of Audit and Audit Resolution Requirements Including the Adoption of Office of Management and Budget Circular A–133.

E. Foster a Comprehensive and Coherent System of Human Resource Services Delivered Through Interagency Collaboration

1. Establishment of the Human Resource Investment Council.

• Clarification regarding the constitution of the State Job Training Coordinating Council (SJTCC) as a Human Resource Investment Council and constitution of the PIC in single SDA States.

2. Clarification Pertaining to Single Points of Service Delivery, Including Delivery of Services and Allocation of Costs.

3. Agreements and Program Specification for Activities under the JTPA Section 123 Program of Education Coordination Grants.

4. Implementation and Operation of the Jobs for Employable Dependent Individuals (JEDI) Incentive Bonus Program under JTPA Title V.

5. Separate guidance will be issued on the Youth Fair Chance Program.

6. Development of joint relationships among job training programs to provide high quality services to individuals.

F. Other Important Clarifications

1. Service Delivery Area Designation and Redesignation.

• Clarification in the area of SDA designation and the designation process including such areas as necessary conditions for designation, incumbent SDAs, competing applications, and frequency of designations.

• The Governor's authority to attach areas to existing SDAs and to constitute SDAs (such as a Balance of State).

2. The Process for the Recapture, Reallocation or Reallotment of Unobligated Funds by the Governor, and Conditions under which the Secretary

might Exercise the Authority to Reallot State Funds.

3. Guidance on the Issue of Duplicate and Overlapping Payments Among Federal, State and Local Programs, including Pell Grants.

4. The Prohibition on Relocation Assistance.

- Clarification of the terms "encourage" and "induce" with regard to relocation.
- Specification with regard to when an establishment is to be considered as "relocating".
- Institute a requirement for pre-award reviews with regard to relocation.

5. The Extent to Which the Areas in This Notice may Affect Programs under JTPA Title IV, Sections 401 and 402.

6. Specific Guidance that May Be Necessary for the Transition Period.

Signed at Washington, D.C., this 8th day of September, 1992.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 92-21959 Filed 9-9-92; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Federal Parolees in HIV-Positive Status

AGENCY: Parole Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Parole Commission is proposing to amend its regulations at 28 CFR 2.40 to add a general condition of parole requiring a parolee with AIDS, or who has tested HIV-positive, to make that medical status known to any individual who is at a high risk of infection from the parolee, either through sexual transmission or intravenous needle use. The appropriateness of such a condition has been suggested to the Commission by the adoption in many states of statutes providing criminal penalties for deliberate failure to notify sexual partners in advance of an HIV-positive status, as well as by concern on the part of U.S. Probation Officers that some HIV-positive parolees are not likely to behave in a socially responsible manner without appropriate guidance from the Commission. The purpose of this general condition of parole will be limited to the prevention of crime (in those states wherein a failure to notify is punishable under a criminal statute) and to enhancing the rehabilitation of the parolee by setting a standard for socially responsible conduct.

DATES: Comments must be received by October 23, 1992.

ADDRESSES: Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Pamela Posch, Office of General Counsel, Telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: Pursuant to 18 U.S.C. 4209, the U.S. Parole Commission is authorized to "* * * provide for such supervision and other limitations as are reasonable to protect the public welfare." The standard conditions that appear on every parolee's certificate of parole are set forth at 28 CFR 2.40, along with certain special conditions of parole which the Commission regularly imposes in certain situations (e.g., drug and alcohol aftercare).

In addition to conditions prohibiting criminal conduct and association with others engaged in criminal conduct, the standard conditions of parole include several conditions aimed at promoting the general rehabilitation of the parolee by requiring adherence to basic standards of socially responsible conduct. Thus, for example, parolees are required to obtain regular employment and to support their dependents to the best of their ability. 28 CFR 2.40(a)(8).

Parolees with AIDS or HIV (which leads to AIDS) present a special problem. On the one hand, the Commission recognizes that these individuals are liable to experience discrimination because of their medical status, and that the burden of their disease must not be allowed to contribute to recidivistic tendencies through a denial of job opportunities and other social adjustment problems. To this end, the Commission has required U.S. Probation Officers to conform to state confidentiality laws, and to defer to federal, state, and local health agencies to resolve the various difficulties that may arise from the parolee's HIV-positive status.

When an HIV-positive parolee is released from prison, it is appropriate for the Commission to help that parolee to adjust to the limitations and social obligations arising from his contagious disease, if that parolee is to achieve the goal of rehabilitation. The Commission is expected by law to provide conditions to parole that "* * * should be sufficiently specific to serve as a guide to supervision and conduct * * *" 18 U.S.C. 4209(b).

Accordingly, the Commission proposes to adopt a standard condition of parole containing the minimum requirement that a parolee who has been diagnosed as HIV-positive must provide notification of his or her medical status to any third party who is exposed to a high risk of contracting the disease from that parolee. The Commission limits the definition of "high risk" individuals to those individuals who would be at risk of contracting HIV through sexual relations with the parolee, and through intravenous needle sharing (itself indicative of illegal use of narcotics).

The Commission emphasizes that it does not intend this general condition to give U.S. Probation Officers the discretion to define broader categories of "high risk" potential victims. For example the condition will not authorize an instruction that a parolee inform co-workers in a restaurant, hospital, or other employment, of his or her HIV-positive status. Although other situations may arise that create a cause for concern, the Commission intends that U.S. Probation Officers refer such matters in the first instance to the appropriate governmental health agency. The Commission's intent, as stated above, is to prohibit clearly reckless behavior that places others at an unconscionable risk of contracting AIDS, and not to make the Commission or any U.S. Probation Officer a guarantor of public or individual health under any circumstance. This is a task that has been assigned by Federal and state legislatures to other agencies.

Executive Order 12291 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this proposed rule is not a major rule within the meaning of Executive Order 12291. This proposed rule, if adopted, will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, probation and parole, prisoners.

Accordingly, the U.S. Parole Commission proposes the following amendment to 28 CFR part 2 as follows.

The Proposed Amendment

1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority. 18 U.S.C. 4203 (a)(1) and 4204(a)(6).

2. In 28 CFR part 2, 2.40 is proposed to be amended by adding the following new paragraph (m):

§ 2.40 Conditions of release.

* * * * *

(m) A parolee with AIDS, or who has been diagnosed as HIV-positive, shall notify any potential high risk victim of his medical condition before the parolee exposes that person to a risk of contracting such disease, either through sexual relations with the parolee or intravenous needle sharing. Notification must be given prior to engaging in such conduct, and is required regardless of any other precaution the parolee may take to prevent transmission of the disease. The requirement is not excused by reason of the parolee's belief concerning the potential victim's probable prior knowledge of the parolee's medical condition.

Dated: September 2, 1992.

Jasper R. Clay, Jr.,

Vice Chairman, U.S. Parole Commission.

[FR Doc. 92-21832 Filed 9-9-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AF52

Veterans Education; Disenrollment From the Post-Vietnam Era Veterans' Educational Assistance Program Following Election To Receive Other Benefits

AGENCY: Department of Defense and Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Department of Veterans Affairs Nurse Pay Act of 1990 requires VA (Department of Veterans Affairs) to make payments to certain military officers and former officers who were commissioned in 1977 and 1978. The law provides that if any of these officers or former officers participated in VEAP (Post-Vietnam Era Veterans' Educational Assistance Program), they must disenroll from that program before receiving those benefits. The National Defense Authorization Act for Fiscal Year 1991 provides additional ways in which an individual may become eligible for the Montgomery GI Bill—Active Duty. One of these permits certain involuntarily separated veterans who ordinarily would be eligible for benefits under the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP) to elect to receive benefits under the Montgomery GI Bill—Active Duty instead. These proposed regulations will acquaint the public with the way in which VA will administer these provisions of law.

DATES: Comments must be received on or before October 13, 1992. Comments will be available for public inspection until October 20, 1992. VA and the Department of Defense intend to make the amendment to that portion of § 21.5058 dealing with those who are involuntarily separated, like the provision of law it implements, retroactively effective on November 5, 1990. VA and the Department of Defense intend to make the amendment to that portion of § 21.5058 dealing with expanded benefits as well as all other regulations in this proposal, like the provisions of law they implement, retroactively effective on August 15, 1990.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until October 20, 1992.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, (202) 233-2092.

SUPPLEMENTARY INFORMATION: Section 207 of the Department of Veterans Affairs Nurse Pay Act of 1990 (Pub. L. 101-366) provides that VA make a benefit payment to certain officers and former officers who elect by January 1, 1992, to receive payments. This officer adjustment benefit is to be the equivalent of what they would have received under the Vietnam Era GI Bill had they been eligible for benefits under that program minus what they received under VEAP. The law provides that VEAP participants must disenroll from VEAP in order to get this benefit.

Section 561 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101-510) contains provisions that will enable additional individuals to become eligible for the Montgomery GI Bill—Active Duty. Under these provisions some involuntarily discharged veterans may elect to receive benefits under the Montgomery GI Bill—Active Duty rather than VEAP. Such an election is irrevocable. Even if a veteran should subsequently return to active duty, he or she could not reenroll in VEAP. The proposed amendments to these regulations are designed to implement these sections of these acts.

The proposed amendments generally follow the provisions of the statutes. However, Public Law 101-366 does not specifically state when the election to receive an officer adjustment benefit is to be effective. Since this is necessary for a uniform administration of the law, this is addressed in the proposed amendment to § 21.5058(b).

There are four convenient points at which an election to receive an officer adjustment benefit could become effective. These are the date the veteran applied for the benefit; the date VA received the application; the date VA authorized the payment of the benefit; or the date the veteran negotiated a benefit check. The departments have chosen the last alternative.

To make a knowledgeable decision concerning whether VEAP is a better benefit than the officer adjustment benefit, a veteran would have to have a detailed knowledge of the rates payable under the Vietnam Era GI Bill. The average person would not have this knowledge. Since the individual would not ordinarily acquire this knowledge before each of the first three alternatives, the departments discarded them. However, by the time the benefit check was sent to the veteran, his or her claim would have been reviewed by a VA employee, and the individual would have received a letter either with the check or before receiving it. The letter would have informed him of the details of the election, so that his or her negotiation of the benefit check would be done in the full knowledge of the consequences of doing so. Therefore, the departments have chosen the last alternative.

Presently, § 21.5064(b)(2)(i) contains a provision which governs refunds when a veteran or servicemember elects to receive benefits under ch. 34, title 38, U.S. Code rather than under VEAP. That provision is deleted because benefits are no longer payable under that chapter.

The Department of Veterans Affairs and the Department of Defense have determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The

regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs and the Secretary of Defense have certified that these amended regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulations directly affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

VA and Department of Defense find that good cause exists for making the amendment to § 21.5058 dealing with those who are involuntarily separated, like the provision of law it implements, retroactively effective on November 5, 1990. VA and Department of Defense find that good cause exists for making the amendment to § 21.5058 as well as all other regulations dealing with the officer adjustment benefit, like the provision of law it implements, retroactively effective on August 15, 1990. These regulations are intended to achieve a benefit for individuals. The maximum benefits intended in the legislation will be achieved through prompt implementation. Hence, a delayed effective date would be contrary to statutory design, would complicate administration of the provision of law, and might result in the denial of a benefit to someone who is entitled to it.

The Catalog of Federal Domestic Assistance number for the program affected by this proposal is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation

Approved: May 21, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Approved: July 8, 1992.

Minter Alexander,

Lieutenant General, USAF, Deputy Assistant Secretary, (Military Manpower & Personnel Policy).

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

For the reasons set out in the preamble, 38 CFR part 21, subpart G is amended as set forth below.

1. The authority citation for part 21, subpart G continues to read as follows:

Authority: 38 U.S.C. 501(a)

2. In § 21.5058, paragraph (b) and its authority citation are revised to read as follows:

§ 21.5058 Resumption of participation.

* * * * *

(b) A person who has disenrolled in order to receive educational assistance allowance under 38 U.S.C., chapter 34 may not reenroll if he or she has negotiated a check under that chapter for pursuit of a program of education. A person who has disenrolled in order to receive an officer adjustment benefit payable under § 21.4703 of this part may not reenroll if he or she has negotiated a check representing benefits payable under that section. A person who has disenrolled in order to receive educational assistance under the Montgomery GI Bill—Active Duty, as provided in § 21.7045(b) of this part, may not reenroll. Any other person who has disenrolled may reenroll, but will have to qualify again for minimum participation as described in § 21.5052(a).

(Authority: 38 U.S.C. 3008A, 3202(1), 3222, Pub. L. 101–366, sec. 207; Pub. L. 98–223, Pub. L. 101–510) (Aug. 15, 1990) (Nov. 5, 1990)

* * * * *

3. In § 21.5064, paragraphs (b)(1) and (b)(2)(i) and the authority citation for paragraph (b)(2) are revised and an authority citation is added for paragraph (b)(1) to read as follows:

§ 21.5064 Refund upon disenrollment.

* * * * *

(b) * * *

(1) If an individual voluntarily disenrolls from the program before discharge or release from active duty, the time limit for providing the serviceperson with a refund will be determined as follows.

(i) If a serviceperson decides to disenroll in order to receive an officer adjustment benefit payable under § 21.4703 of this part, VA will refund the unused contributions not later than 60 days after receiving the serviceperson's valid election for the benefit.

(ii) In all other cases VA will refund the money on—

(A) The date of the participant's discharge or release from active duty; or

(B) Within 60 days of the receipt of notice by VA of the individual's discharge or disenrollment; or

(C) Any earlier date in an instance of hardship or for other good reasons.

(Authority: 38 U.S.C. 3223, 3232, Pub. L. 101–366, sec. 207) (Aug. 15, 1990)

(2) * * *

(i) If a veteran disenrolls by electing to receive an officer adjustment benefit payable under § 21.4703 of this part rather than receiving educational assistance under 38 U.S.C., chapter 32, VA shall refund his or her contributions not later than 60 days after receiving a valid election for the officer adjustment benefit.

* * * * *

(Authority: 38 U.S.C. 3202, 3223, 3232, Pub. L. 101–366, sec. 207)

* * * * *

[FR Doc. 92–21691 Filed 9–9–92; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–4203–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of intent to delete Metal Working Shop site from the National Priorities List; Request for comments.

SUMMARY: The U.S. Environmental Protection Agency (EPA), Region V, announces its intent to delete the Metal Working Shop Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. The Medal Working Shop Site meets the NPL deletion criterion set forth in the NCP.

Specifically, the Site Remedial Investigation Report indicates that the risk at the Site poses no significant threat to public health and the environment. Therefore EPA, in consultation with the State of Michigan, has determined that no cleanup is appropriate for the Metal Working Shop Site. The purpose of this notice is to request public comment on the intent of EPA to delete the Metal Working Shop Site from the NPL.

DATES: Comments concerning the proposed deletion of the site from the NPL may be submitted October 13, 1992.

ADDRESSES: Comments may be mailed to Samuel F. Borries (HSRW 6J), Remedial Project Manager, Office of Superfund, U.S. Environmental Protection Agency, Region V, 77 West Jackson Blvd., Chicago, IL. 60604. Comprehensive information on this site is available at the local repository located at: Almira Township Office, 7276 Sweet Lake Road, Box 100, Lake Ann, MI. 49650, (616) 275–6346. Requests for comprehensive copies of documents should be directed formally to the appropriate Regional Docket Office: Janet Pfundheller, Waste Management Docket Control Officer, (5H-7J), Region V, U.S. EPA, 77 W. Jackson Boulevard, Chicago, IL. 60604, (312) 353–5821.

FOR FURTHER INFORMATION CONTACT: Samuel F. Borries (HSRW-6J), Remedial Project Manager, Office of Superfund, U.S. Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, IL. 60604, (312) 353–3156; or Philip Schutte (P–19J), Office of Public Affairs, U.S. EPA, Region V, 77 West Jackson Boulevard, Chicago, IL. 60604, (312) 353–8685.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The United States Environmental Protection Agency (EPA) announces its intent to delete the Metal Working Shop site, Lake Ann, Michigan from the National Priorities List (NPL), which constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR part 300 (NCP), and requests comments on this deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. The Metal Working Shop was proposed for inclusion of the NPL on January 22, 1987, and became final on the NPL February 21, 1990. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Response Trust Fund (FUND). Pursuant to § 300.425(e)(3) of the NCP any site deleted from the NPL remains eligible for further Fund-financed remedial action should future conditions at the site warrant such action.

The EPA will accept comments on this Site for thirty days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that the EPA is using for this action. Section IV discusses the history of the Site and how the Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with § 300.425(e) of the NCP, sites may be deleted from or recategorized on the NPL where no further response is appropriate. In making this determination to delete a site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria has been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Section 300.425(e)(2) of the NCP states that no site shall be deleted from the NPL until the state in which the site is located has concurred on the proposed deletion.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-Financed actions if future conditions warrant such actions. Section 300.425(e)(3) states that whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without application of the hazard ranking system (HRS).

Deletion of sites from the NPL does not in itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

III. Deletion Procedures

Upon determination that at least one of the criteria described in § 300.425(e)(1) of the NCP has been met, EPA may formally begin deletion procedures. The first steps are the preparation of a Closeout Report or No Action Record of Decision and the establishment of the local information repository and the Regional deletion docket. These actions have been completed. Please note that for this No-Action Site the Record of Decision represents the Closeout Report. This Federal Register notice, and a concurrent notice in the local newspaper in the vicinity of the Site, announce the initiation of a 30 day public comment period. The public is asked to comment on EPA's intention to delete the Site from the NPL; all critical documents needed to evaluate EPA's decision are generally included in the information repository and deletion docket.

Upon completion of the public comment period, the EPA Regional Office will prepare a Responsiveness Summary to evaluate and address concerns which were raised. The public is welcome to contact the EPA Regional Office to obtain a copy of this Responsiveness Summary, when available. If EPA still determines that deletion from the NPL is appropriate, a final notice of deletion will be published in the Federal Register.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for intending to delete the Metal Working Shop Site, Lake Ann, Michigan from the NPL.

The Metal Working Shop (MWS) Site, occupying approximately 2.77 acres, is located in central Almira Township, Benzie County, Michigan, approximately 12 miles west of Traverse City Michigan. Metal Working Shop is located at 6892 N. Reynolds Road between Lake View and Lake Ann along the northwest corporate boundary of Lake Ann Village.

The surrounding land use is characterized as residential, recreational, agriculture, and timberland. Several summer resorts are located in the area. Both Lake View and Lake Ann have summer resorts located on their shores. Depth to ground water beneath the site is approximately 60 feet. The aquifer consists of glacial sands and gravel. Surrounding residents are currently using private well systems for drinking water.

The Site has been used for a variety of metal finishing and tool and die operations over the past 26 years. The

basis of environmental concern dates back to the period of October 1975 to February 1977, when the operator conducted metal finishing operations using an iron phosphate treatment process. The process consisted of five steps, each performed in a separate tank approximately three feet on a side with a capacity of approximately 200 gallons. First, the metal parts were cleaned in a heated sodium hydroxide solution. Following a rinsing step in ordinary water, the parts were treated in a heated hydrochloric acid solution containing iron phosphate. After a second rinse in ordinary water, the parts were dipped in a bath containing a water-soluble oil. It is reported that water from the two rinse tanks only, was then disposed of on the ground surface at the Site. The largest and current operator, Lake Ann Manufacturing, occupied the facility in 1983 and has assembled mechanical shaft seals for pumps and compressors since that time.

The Site was evaluated by the EPA in December 1984. EPA identified three suspected areas of disposal, an alleged disposal area, an alternate disposal area, and the septic system. No samples were collected at that time but historical information was gathered during the Site investigation. The Site was proposed to be placed on the National Priorities List (NPL) in January 1987 on the basis of its potential for causing groundwater contamination. The Site became final on the NPL in February 1990.

A soil and ground water investigation of the site was performed by a private contractor for the current operator in May 1987. This investigation included the collection of several soil samples and the installation of three ground water monitoring wells. Michigan Department of Natural Resources (MDNR) split samples with the contractor at the time of the investigation. Evaluated collectively, the analytical data from the May 1987 investigation did not indicate the presence of soil or ground water contamination; neither, however, did it prove the absence of potentially present contamination based on historical dumping. No enforcement or removal actions have been conducted at the MWS site.

Field activities during the remedial investigation began in April 1991. These activities included a ground penetrating radar survey, evaluations and sampling of existing monitoring wells, residential well sampling, surface and sub-surface soil sampling, surface water and sediment sampling, permeability test of the aquifer, and natural gamma logging of the monitoring wells. U.S. EPA completed the remedial investigation report in February 1992.

Ten residential wells, located on all sides of the Site, and three Site monitoring wells were sampled during the remedial investigation. No residential wells indicated the presence of significant Site contamination above background levels. Likewise, Site monitoring wells did not reveal the presence of significant contamination above background levels.

A baseline risk assessment of the Site was prepared as part of the remedial investigation. It concluded that the Site does not pose a threat to public health or the environment under current conditions because of the absence of human exposure to significant levels of hazardous substances. No significant environmental and human exposure pathways were identified during the risk assessment process.

On June 30, 1992, a Record of Decision (ROD) was signed which approved the "No Further Action" remedy. The State of Michigan concurred with the ROD.

Community Relations activities during and after the remedial investigation included discussing site concerns with residents and local officials, public meetings, and the publication of a factsheet on the RI and Proposed Plan.

The dates of the public comment period, the date and location of a public hearing and a summary of the Proposed Plan were announced through a legal notice in a local newspaper.

The Metal Working Shop Proposed Plan, which includes a description of the investigation findings and conclusions, was mailed to those on the community relations mailing list and was available along with the Administrative Record at the information repository at the Almira Township Office in Lake Ann.

The Proposed Plan public hearing was held at the Lake Ann Township Hall, Maple Street, Village of Lake Ann, on May 28, 1992 to discuss the RI and the preferred alternative. Nine people were at the hearing. Their concerns were addressed in the Community Relations Responsiveness Summary.

All completion requirements for this Site have been met as specified in OSWER Directive 9320.2-3A. Sampling has verified that ground water and Site soils are free of contamination. Therefore, the ROD of June 30, 1992 recommended "No Further Action". Because this remedy will not result in hazardous substances remaining on-site above health-based levels, the five-year review will not apply to this action.

Valdas V. Adamkus,

Regional Administrator, U.S. EPA, Region V.

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BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 218

[FRA Docket Number RSOR-11, Notice No. 1]

RIN 2130—AA77

Railroad Operating Practices; Protection of Utility Employees; Notice of Proposed Rulemaking

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA regulations prescribe minimum requirements for certain railroad operating rules and practices, including blue signal protection of railroad employees engaged in the inspection, testing, repair, and servicing of rolling equipment. Such activities may require employees to work on, under, or between such equipment and subject them to the danger of personal injury posed by any movement of such equipment. Train and yard crews are excluded from blue signal protection, unless assigned to perform such work on railroad rolling equipment that is not part of the train or yard movement they have been called to operate. FRA proposes to restate the exclusionary language to accommodate augmentation of a crew by using a "utility" employee. Alternative safety procedures are proposed to prevent injury.

DATES: (1) Written comments must be received on or before October 9, 1992. Comments received after that date will be considered to the extent practicable.

(2) Public hearing: A public hearing will be held at 10 a.m. on October 16, 1992. Any person who desires to make an oral statement at the hearing is requested to notify the Docket Clerk at least five working days prior to the hearing, by telephone or mail, and to submit three copies of the oral statement that he or she intends to make at the hearing.

ADDRESSES: (1) Written Comments: Address comments to the Docket Clerk, Office of Chief Counsel, RCC-30, Federal Railroad Administration, Department of Transportation, 400

Seventh Street, SW., room 8201, Washington, DC 20590. Comments should identify the docket number and five copies should be submitted. Persons wishing to receive confirmation of the receipt of their comments should include a self-addressed stamped postcard. The Docket Section is located in room 8201 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Public dockets may be reviewed between the hours of 8:30 a.m. and 5 p.m., Monday through Friday, except holidays.

(2) Public hearing: A public hearing will be held at room 2230, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Persons making statements at the hearing should notify the Docket Clerk by telephone (202–366–0628) or by writing to the Docket Clerk at the address above, and provide five copies of their remarks at the hearing. *

FOR FURTHER INFORMATION CONTACT: Edward Pritchard, Office of Safety, FRA, RRS–11, Washington, DC 20590 (telephone (202) 366–9252), or Sarah J. Landise, Office of Chief Counsel, FRA, Kansas City, Missouri 64106 (telephone (816) 426–2497).

SUPPLEMENTARY INFORMATION:

Background

The "blue signal" regulation (49 CFR part 218, subpart B) was promulgated to "prescribe minimum requirements for the protection of railroad employees engaged in the inspection, testing, repair, and servicing of rolling equipment whose activities require them to work on, under, or between such equipment and subjects them to the danger of personal injury posed by any movement of such equipment." 49 CFR 218.21. Examples of activities requiring blue signal protection include, but are not limited to, the following: Breaking or making steam and air hose connections (including connection by coupling irons), connecting or disconnecting electric control cables between equipment, replacing broken coach windows, making repairs beneath the car to blower motors or steam regulators, making electric pantograph inspections, repairing or replacing a rear end marker or telemetry device, and conducting initial terminal air brake tests when employees are required to go on, under, or between rolling equipment.

A person requiring blue signal protection is referred to as a "Workman." 49 CFR 218.5(a). Train and yard crews are excluded from blue signal requirements except when assigned to perform such work on railroad rolling equipment that is not part of the train or yard movement they have been called to operate. This exclusion is based on the rationale that, working together as an operating crew with their assigned engineer in control of the locomotive, the crew members have complete control over any movement of the equipment on which they are working.

Since promulgation of the regulation, the size of train and yard crews has been significantly reduced through the collective bargaining process and increased operating efficiencies. Implementation of the recommendations of Presidential Emergency Board No. 219 ("PEB 219") (see Pub. L. No. 102–29, 1991) is greatly accelerating this process of change. PEB 219 recommendations resulted in referral of train service crew consist issues for resolution on the individual railroad properties, initially through negotiation. Failing agreement, these issues were to be resolved through binding arbitration. Through this and prior processes, crews that once consisted of a locomotive engineer, fireman, conductor, and two trainmen, have in many cases been reduced to a locomotive engineer and conductor only.

Role of the Utility Employee

Both before and after the PEB 219 process, railroads have used utility employees to assist the train or yard crew on a temporary basis. FRA recently performed an internal survey which indicated that at least seven Class I railroads and three regional railroads are experimenting with the use of utility employees to supplement train and yard assignments. This practice involves approximately two hundred employees from the train service ranks at more than sixty-five locations. The following are examples of functions that are being performed by utility employees:

- Operating switches, except by remote control, in yard or terminal areas or at industrial sidings and sending or receiving hand or radio communications with respect to such switching movements;
- Working with the regular train or yard crew to assemble trains from pre-tested and pre-inspected blocks of cars by aligning couplers, coupling air hoses, and assisting switching movements;
- Participating in power brake inspections at initial terminals or intermediate terminals (49 CFR 232.12, 232.13);
- Participating in Freight Car Safety Standards inspections at initial terminals or elsewhere when cars are placed in a train (49 CFR 215.13); and
- Installing, testing, or replacing rear end marking devices (and/or telemetry devices) (see 49 CFR 221.16).

The blue signal regulations have, in the view of the railroads, constituted an impediment to the efficient use of these additional employees. The degree of perceived conflict between the regulatory requirements and efficient utilization of personnel has now reached a critical level. It is therefore appropriate to consider whether there are conditions under which train and yard crews may be temporarily augmented without a diminution of safety.

The Proposed Rule

Existing regulations require extensive blue signal protection where workers other than train and engine crews are required to go on, under, or between moving equipment to perform functions such as inspection, testing, repair, and servicing. It was determined that train and yard crews could safely be excluded from blue signal requirements because the characteristics of their activity provide alternative protection for the crew members. They work as a team and maintain communications with each other. The engineer at the controls of the locomotive is aware of the identify of those working on the train and can therefore prevent undesired movement of the equipment while any crew members are in the zone of danger. The engineer also is in contact with other trains in the vicinity and can prevent unexpected couplings.

Under the present regulation, however, the train and yard crew exclusion does not extend to utility employees. These employees are required to establish full blue signal protection prior to performing any work on, under, or between the equipment. To avoid that necessity, the railroad might instead assign a brakeman to a crew for an entire tour of duty, even though that person's services are only required for a small portion of the duty tour. The railroad is therefore thwarted in its efforts to efficiently deploy its personnel.

In situations where the utility employee is working independently of the crew, the requirement of full blue signal protection is justified, since that employee lacks those characteristics that afford alternative protection. However, when the utility employee actually becomes an integral part of the crew, even temporarily, it is difficult from a safety perspective to justify the different regulatory treatment of that employee from other crew members. FRA believes that the portion of the rule for which no identifiable safety issue exists is unduly restrictive and impedes the railroad industry's efforts to improve

the efficiency of its operations. Accordingly, FRA proposes to amend the blue signal regulations to allow a utility employee to become member of a train or yard crew (and thus entitled to the exclusion from blue signal requirements) under circumstances where safety will not be compromised.

The proposed rule seeks to define the appropriate safeguards under which a utility employee may safely function as a "part of the train or yard movement" for a limited period. This proposal is based on the premise that the utility employee should be able to work under essentially the same conditions as other yard or train crew members of the crew with which that employee is associated; provided appropriate communication is established and maintained. It remains essential that any employee who is not assigned to a train or yard crew, but who inspects, tests, repairs, or services rolling equipment and is on, under, or between that equipment, continues to be a "workman" (or "worker," as provided under the gender-neutral amendment that would be made by this proposal) requiring blue signal protection.

FRA has traditionally viewed the blue signal requirements as addressing functional rather than craft distinctions. For instance, if supervisors perform duties that constitute inspecting, testing, repairing, or servicing, and that cause them to go on, under, or between the equipment, they are not excused from blue signal requirements by virtue of their supervisory occupation. However, it must be noted that Congress, in excluding train and yard crews from blue signal requirements, took into consideration the types of duties traditionally performed by those crews. FRA is concerned that, should this proposed rule be adopted, some might attempt a material expansion of the categories of tasks performed by train and yard crews without blue signal protection in a way that would decrease the overall level of safety provided, particularly with respect to repair and servicing activities. FRA therefore requests comments regarding the effect this rule could have on the dutues assigned to the train or yard crew, and whether an expansion of those duties would cause a diminution of safety.

Moreover, FRA is aware that this rulemaking has the potential to affect a railroad's decisions regarding the class or craft of employees performing the crew's duties. FRA generally has no interest in which craft of employees performs work as long as it is done competently. However, FRA does recognize that the quality of inspection and testing may vary depending on the degree of qualification of the subject employees. This issue is most dramatically illustrated by reference to appendix D of 49 CFR part 215, which identifies for pre-departure inspection a subset of extremely hazardous and patent defects operating employees are expected to identify when performing inspections. Although railroads are not excused from compliance with the pre-departure inspection rule by virtue of their decisions with respect to placement of mechanical forces to perform more detailed inspections, there can be little doubt that it is in the interest of safety to encourage reasonable deployment of qualified personnel who can be expected to identify critical defects not included on the appendix D "short list." Comment is thus requested on whether permitting utility employees to work without blue signal protection is likely to favor use of these individuals to the detriment of adequate deployment of qualified mechanical employees. Comment is also requested on whether this is the proper context within which to address that concern.

Section-by-Section Analysis

Section 218.5 (Definitions) would be amended to remove the paragraph designations, reorder the existing definitions alphabetically, and add new definitions of "controlling locomotive," "utility employee," and "worker" (in lieu of "workman"). Under the proposed definition, a "utility employee" would be an individual assigned to and functioning as a part of a train or yard crew who is personally subject to both the railroad's operating rules and the Hours of Service Act. These definitional elements are necessary to ensure that the utility employee understands and can function safely in the operating environment.

If a utility employee is to be considered a temporary member of a train or yard crew, that individual is engaging in activities governed by the railroad's operating rules and must understand those rules. Section 217.11 requires that railroads periodically instruct employees on the railroad's operating rules in accordance with its program. FRA would expect a railroad to amend its present program if necessary to ensure that utility employees are thoroughly trained in applicable operating rules.

In addition, § 217.9 requires that railroads periodically conduct operational tests and inspections (efficiency tests) to determine the extent of compliance with its code of operating rules, timetables, and timetable special instructions in accordance with its program. FRA would expect a railroad to amend its present program if necessary to ensure that utility employees are included in the required testing and inspections.

A utility employee who is assigned to and functioning as a part of a train or yard crew is considered to be engaged in or connected with the movement of a train for hours of service purposes under section 2 of the Hours of Service Act. The "commingled service" provision would of course be applicable if the utility employees engage in any other service for the railroad.

Because utility employees may be performing both covered and non-covered service during a duty tour, it is anticipated that the utility employee would complete an individual hours of duty record. This generates concern that enforcement of this proposed rule would be difficult because FRA does not now require that an hours of duty record include the train or yard designation.

FRA therefore invites comments on the feasibility of a utility employee's identifying the train or yard designation he is assigned to and the beginning and ending times spent working as a temporary crew member. Another option would be for the regularly assigned ranking crew member of the train or yard assignment to record the name of the utility employee and the beginning and ending times that he spent working as a temporary member of the crew.

Section 218.24 (Utility Employee), a new provision proposed to be added to the existing part, would define the circumstances under which the utility employee would be permitted to function without the benefit of the protection provided by the blue signal regulations. It is not anticipated that this section will affect activity within locomotive servicing or car shop areas. However, FRA requests comments as to whether latitude should be extended to such areas and on what basis. FRA reserves the right to do so if comments warrant.

It is essential that a utility employee be assigned to only one crew at a time. This is necessary to prevent confusion as to the location and duties of that employee, and to ensure that the employee is, in reality, a member of the crew to which he or she is assigned for the duration of the assignment. For example, if an employee is assigned as a train crew member to one train for an entire tour of duty, that employee may not, while awaiting departure from the yard, be temporarily assigned to a second train crew to help them prepare to depart. On the other hand, a member

of an inbound train crew at a crew change point, whose assignment to the train is essentially completed, could then be assigned as a utility employee to the outbound crew to assist in preparation for departure of the train (assuming, of course, that hours of service limitations are not implicated). Furthermore, an employee could not simultaneously perform duties on two different trains. For the exclusion to apply, a utility employee would have to be virtually indistinguishable, in duties and location, from any other train crew member.

Communication and coordination among the entire crew, including the utility employee, would be crucial to the safety of the utility employee. Upon being assigned to a train or yard crew and arriving at the place where work is to be performed, the utility employee would have to establish personal contact with the locomotive engineer and become fully conversant about the tasks to be performed while assigned as a member of that crew and until released by the person in charge. While the assignment of a utility employee to a train or yard crew could be made by oral or written communication initiated by railroad supervision, the utility employee would be required to establish personal contact with the locomotive engineer by either a face-to-face discussion or telephone or radio communication. The engineer would be required to fully inform all crew members about the addition of the utility employee; and communication would have to be established in the normal manner with respect to the activities to be performed. Communication of the identity of the utility employee is necessary to prevent confusion, particularly in the event more than one utility employee is assigned to a particular crew. The release of the utility employee would have to be accomplished by the same process by which all crew members are fully informed, and may only occur after the utility employee has not only ceased work, but is no longer on, under, or between the equipment. If these procedures were not strictly followed, the potential for misunderstanding and failure to properly account for all employees within the zone of danger would be unacceptably high. When fulfilling the proposed communication requirements by radio, strict adherence to proper procedures under 49 CFR part 220 is essential.

FRA does not anticipate that a railroad would need to assign more than one or two utility employees to a particular crew. However, the level of safety provided by the above communication requirements might be compromised in some circumstances if several utility employees were assigned to a crew. As a number of utility employees increases, the ability of the locomotive engineer to monitor the location and activity of each crew member could diminish. FRA therefore invites comments on whether the establishment of a maximum number of utility employees assigned to a particular train is necessary or warranted.

The presence and vigilance of the engineer at the controls (or, at the very least, in the cab) of the controlling locomotive would also be imperative. The presence of the engineer at the controls was a central factor that led Congress initially to decide that train and yard crews could be safely excluded from blue signal protection. Not only can the engineer, by his presence, prevent another employee from gaining control of and moving the equipment, but he or she can further guard against any failure of the equipment (i.e., the air brakes) that may lead to unintended and unexpected movement of the equipment and can also guard against dangers posed by oncoming equipment. Should the engineer leave the controls of the locomotive, that protection is lost. Notwithstanding these views, FRA is willing to entertain comments regarding alternative protection that would provide a level of safety equivalent to that provided by the continuous presence of the engineer in the cab.

It necessarily follows from the requirement that the engineer remain at the controls of the locomotive, that the locomotive also must be coupled to the rolling equipment on which the work is being performed by the crew. If the locomotive is not attached, nothing protects that equipment from unexpected movement. Accordingly, the exclusion for train and yard crews is only applicable when that crew is working on a train, which is defined for the purpose of subpart B of 49 CFR part 218 as one or more locomotives coupled, with or without cars. An exception to this is preparation of a car for immediate coupling.

For example, if a train will be made up of two blocks of cars on separate tracks, a crew member (including a utility employee) would be permitted to perform work on the first block of cars only after the locomotive has been attached. The crew member may not perform work on the second block of cars (other than to prepare for an immediate coupling) until the train is completely made up.

There may be limited circumstances where crew members have an equivalent level of protection against unintended movement of the equipment even though the locomotive is not coupled to the rolling equipment upon which work is being performed. For example, a crew assembling a train at an industry siding where no other locomotives or rolling equipment are present is in no practical danger of unexpected coupling. FRA invites comments on whether in this or other circumstances crew members may be assured of an equivalent level of protection and therefore be permitted to perform work on rolling equipment without a locomotive coupled to that equipment.

FRA is also concerned that protection provided for one-person assignments (i.e., hostlers or other unaccompanied engineers) be consistent with safety and efficiency. FRA specifically invites comments on the circumstances under which these engineers acting along might be permitted to perform functions outside of the area under the control of mechanical forces without complete blue signal protection as provided under §§ 218.25 (main track) or 218.27 (other than main track).

Regulatory Impact Analysis

E.O. 12291 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures and is considered to be major under Executive Order 12291 and significant under DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). FRA has prepared and placed in the rulemaking docket a regulatory evaluation addressing the economic impact of this rule. FRA's initial estimate, based on preliminary data, is that the proposed rule will yield a total of approximately $600 million in discounted benefits over 10 years. The potential benefits are about $183 million a year. FRA expects to realize only 30 percent of that amount in the first year and 75 percent of the potential annual benefit in the tenth year. This estimate is preliminary and will be adjusted as FRA refines its data. A copy of the regulatory evaluation may be inspected and copied in room 8201, 400 Seventh Street, SW., Washington, DC 20590.

Economic Analysis

FRA estimates that the proposed rule could create as much as $183 million per

year in benefits, but, because of institutional constraints, the proposed rule will create about $600 million in discounted benefits over ten years. It appears that many of the railroads are not in a position to use utility employees and that many others will be limited in using utility employees, either by structural factors or by labor agreements. FRA estimates that only about 30 percent of the potential benefit will be available in the first year, but that more of the potential benefit will be realized each year, until 75 percent of the benefit is realized in the tenth year. The delay in realizing the potential benefits of utility employees will be accompanied by a corresponding delay in incurring the few costs associated with this rulemaking.

The main benefit to society is that railroads will operate more efficiently. This proposal will reduce the time needed to place and remove end-of-train markers, which will create most of the benefit of this rule. FRA estimates that this rule would save approximately $100 million per year in delay costs if all of the railroads were in a position to take advantage of it. The railroads will not have to employ a brakeman for an entire shift if it is only necessary to have the brakeman for yard operations. If will be much less costly to hire a utility employee to help switch cars than to attach an additional crew member. The savings will be proportional to the extent that labor agreements permit the railroads to take advantage of the more flexible safety rules. This would yield an estimated savings of $100 million per year. If one-third of the potential savings is an overlap with the expected savings from reduced train delay, then the estimated potential savings from reduced labor costs would be $100 million. The combined potential savings would be approximately $200 million per year.

If a railroad were not in a position to take advantage of the increased flexibility offered by FRA, the benefits and costs of this rule would be zero, as far as that railroad is directly concerned. Of course, if other railroads that were able to take advantage of this rule were competing more effectively with trucks, then more freight would move by rail, increasing the general level of prosperity for all railroads.

FRA believes that the communication provisions of this proposed rule will provide a level of safety at least as great as the current rules provide. There is no equivalent requirement for train crews to maintain communications under the current rules. Therefore, the utility workers will be at least as safe as brakemen are under current rules. FRA does not believe this rule will induce any safety costs.

The proposed rule says that the utility employees must join the crew either by direct contact or by establishing and maintaining communication. The most conservative approach to analyzing the economics of the proposal would be to assume that the railroads use radios to establish communications, since radio would provide the railroads with the greatest flexibility, but would also require the largest investment in equipment. This analysis is based on the assumption that railroads will use radios to establish communication. FRA estimates that railroads will purchase radio equipment costing $130,000 in discounted costs over ten years. This cost is not imposed by the rule, but railroads will make the expenditure in order to take advantage of the proposed rule.

In summary, FRA believes that the proposed rule will provide the same level of safety as the current rules, but will lower the cost of railroad operations by permitting railroads to utilize flexibility contained in collective bargaining agreements. FRA solicits comments on the benefits and costs of this proposal.

Regulatory Flexibility Act

FRA certifies that this rule may have a significant impact on a substantial number of small entities. FRA has prepared and placed in the rulemaking docket a regulatory flexibility analysis.

Paperwork Reduction Act

There are no new information collection requirements in these proposed FRA regulations. Consequently, no estimate of a public reporting burden is required.

Environmental Impact

These rule revisions will not have any identifiable environmental impact.

Federalism Implications

These rule revisions should not have substantial effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Request for Comments

FRA proposes to amend part 218 of title 49, Code of Federal Regulations, as set forth below, and to make any conforming changes to related parts that may be appropriate. FRA solicits comments on all aspects of the proposed rule and the analysis advanced in explanation of the proposal, whether through written submissions, participation in the public hearing, or both. FRA may make changes in the final rules based on comments received in response to this notice.

List of Subjects in 49 CFR Part 218

Occupational safety and health, Penalties, Railroad employees, Railroads, Reporting and recordkeeping requirements.

In consideration of the foregoing, FRA proposes to amend part 218 of title 49, Code of Federal Regulations as follows:

PART 218—[AMENDED]

1. The authority citation for part 218 shall continue to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

2. Amend the part by removing the term "workman" wherever it appears and by adding in lieu thereof "worker," and by removing the term "workmen" wherever it appears and by adding in lieu thereof "workers."

3. Revise § 218.5 to read as follows:

§ 218.5 Definitions.

Absolute block means a block in which no train is permitted to enter while it is occupied by another train.

Blue signal means a clearly distinguishable blue flag or blue light by day and a blue light at night. When attached to the operating controls of a locomotive, it need not be lighted if the inside of the cab area of the locomotive is sufficiently lighted so as to make the blue signal clearly distinguishable.

Camp car means any on-track vehicle, including outfit, camp, or bunk cars or modular homes mounted on flat cars used to house rail employees. It does not include wreck trains.

Car shop repair track area means one or more tracks within an area in which the testing, servicing, repair, inspection, or rebuilding of railroad rolling equipment is under the exclusive control of mechanical department personnel.

Controlling locomotive means any locomotive, as defined in this section, with the exception of a locomotive in a consist that has its propulsion system, sanders, dynamic brakes, and power brake systems arranged to respond only to the controls of another locomotive in that consist.

Effective locking device when used in relation to a manually operated switch or a derail means one which is:

(1) Vandal resistant;
(2) Tamper resistant; and
(3) Capable of being locked and unlocked only by the class, craft or group of employees for whom the protection is being provided.

Flagman's signals means a red flag by day and a while light at night, and a specified number of torpedoes and fusees as prescribed in the railroad's operating rules.

Group of workers means two or more workers of the same or different crafts assigned to work together as a unit under a common authority and who are in communication with each other while the work is being done.

Interlocking limits means the tracks between the opposing home signals of an interlocking.

Locomotive means a self-propelled unit of equipment designed for moving other equipment in revenue service including a self-propelled unit designed to carry freight or passenger traffic, or both, and may consist of one or more units operated from a single control.

Locomotive servicing track area means one or more tracks, within an area in which the testing, servicing, repair, inspection, or rebuilding of locomotives is under the exclusive control of mechanical department personnel.

Main track means a track, other than an auxiliary track, extending through yards or between stations, upon which trains are operated by timetable or train order or both, or the use of which is governed by a signal system.

Rolling equipment includes locomotives, railroad cars, and one or more locomotives coupled to one or more cars.

Switch providing access means a switch which if traversed by rolling equipment could permit that rolling equipment to couple to the equipment being protected.

Utility employee means an employee assigned to and functioning as a temporary member of a train or yard crew (subject to the conditions set forth in § 218.24 of this chapter), who is subject to the railroad operating rules, including the programs of instruction and operational tests and inspections required in §§ 217.9 and 217.11 of this chapter, whose service is subject to the Hours of Service Act, and whose service is required to be recorded by part 228 of this chapter.

Worker means any railroad employee assigned to inspect, test, repair, or service railroad rolling equipment, or their components, including brake systems. Members of train and yard crews are excluded except when assigned such work on railroad rolling equipment that is not part of the train or yard movement they have been called to operate (or been assigned to as "utility employees"). Utility employees assigned to and functions as temporary members of a specific train or yard crew (subject to the conditions set forth in § 218.24 of this chapter), are excluded except when assigned such work on railroad rolling equipment that is not part of the train to which they have been assigned.

Note: As used in the definition, "worker". Servicing does not include supplying cabooses, locomotives, or passenger cars with items such as ice, drinking water, tools, sanitary supplies, stationary, or flagging equipment.

Testing does not include (1) visual observations made by an employee positioned on or alongside a caboose, locomotive, or passenger car; or (2) marker inspections made in accordance with the provisions of § 221.16(b) of this chapter.

4. Add a new § 218.24 to read as follows:

§ 218.24 Utility employee.

(a) A utility employee may be assigned to and serve as a member of only one train or yard crew at any given time (i.e., although service with more than one crew may be sequential, concurrent service is not permitted).

(b) A utility employee may be assigned to and serve as a member of a train or yard crew without the protection otherwise required by this subpart only under the following circumstances:

(1) The train or yard crew is assigned a controlling locomotive that is under the actual control of the assigned locomotive engineer as provided in this section.

(2) The locomotive engineer shall be at the controls of the controlling locomotive or, at least, in the cab of the controlling locomotive.

(3) Immediately upon arriving at the location of the train and controlling locomotive and before commencing any duties in association with the crew, the utility employee shall establish communication with the crew by contacting the locomotive engineer. Before each utility employee commences duties with the crew, the locomotive engineer shall provide actual notice to every other member of the crew of the presence and identity of the utility employee. Upon verbal acknowledgement by each other member of the crew that this notification has been received and understood, the utility employee shall be advised by the locomotive engineer that all such notifications have been made. The utility employee is then authorized to work as part of the crew. Thereafter, integral communication shall be maintained in the manner required by the railroad operating rules, such that each member of the working unit understands the duties to be performed and whether those duties will cause any member to go on, under, or between the rolling equipment.

(4) When the utility employee has ceased all work in connection with that train and is no longer on, under, or between the equipment, the utility employee shall so notify the locomotive engineer. The locomotive engineer shall then provide actual notice to every member of the crew that the utility employee is being released from the crew. Each crew member shall verbally acknowledge the notification. The locomotive engineer shall then notify the utility employee that he is released from the train or yard crew.

(5) Communications required by paragraphs (3) and (4) shall be conducted either through direct personal verbal contact, by radio in compliance with part 220 of this chapter, or by telecommunication procedures specified in the railroad's operating rules ensuring equivalent integrity.

(c) Any employee who is not assigned to a train or yard crew or who is not functioning as a member of a crew under the conditions set forth by this section is a worker required to be provided blue signal protection in accordance with §§ 218.23–218.30 of this chapter.

(d) Nothing in this section shall affect the alternative form of protection specified in § 221.16 of this chapter with respect to inspection of marking devices.

Issued in Washington, D.C., on August 27, 1992.

Gilbert E. Carmichael,
Federal Railroad Administration.

[FR Doc. 92–21585 Filed 9–9–92; 8:45 am]
BILLING CODE 4910–06–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1002, 1018, 1312, 1313, and 1314

[Ex Parte No. 508]

Fee Billing and Debt Collection

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this proceeding the Commission is proposing regulations which will codify the Commission's tariff filing fees and insurance service

fee account procedures and policies. The Commission also is proposing regulations which will establish the procedures that the Commission will follow to collect debts which are owed to it by entities or persons who are not employed by the Commission. These debt collection regulations are based upon the Federal Claims Collection Standards (FCCS) issued jointly by the General Accounting Office (GAO) and the U.S. Department of Justice (DOJ) at 4 CFR parts 101–105 and the provisions of the Deficit Reduction Act of 1984 (31 U.S.C. 3702A) that authorize agencies to report discharged debts to the Internal Revenue Service and to effect administrative offset against tax refunds due to debtors. The Commission also is codifying its procedures for handling returned checks and adopting a new fee for handling such matters. These procedures will enable the Commission to improve its collection of debts.

In order to facilitate data entry for the tariff filing fee collection system, these proposed regulations provide a standard format for information submitted in tariff and contract transmittal letters.

DATES: Comments are due October 12, 1992.

ADDRESSES: An original and 15 copies of comments, referring to Ex Parte No. 508, should be submitted to: Office of the Secretary, Case Control Branch, Room 1324, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, (202) 927–5493 [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION:

Background

In 1984 the Commission adopted a major revision of the Commission's user fee program in Regulations Governing Fees for Service, 1 ICC2d 61, 90 (1984). One of the new fees introduced in the revised user fee schedule was a fee for the filing of tariffs, supplements, and contracts. Since a substantial number of tariffs are filed daily, the Commission developed a tariff fee account system to facilitate collection of those fees. Previously in Motor Carrier and Freight Forwarder Insurance Procedures and Minimum Amounts of Liability, 133 M.C.C. 273, 276–277 (1983), the Commission established a fee billing system for insurance filings. However, the Commission did not formally adopt regulations pertaining to either billing procedure.

In this proceeding the Commission is proposing regulations which codify the Commission's procedures for establishing and maintaining these billing accounts. These proposed regulations also implement the government-wide debt collection procedures of the Federal Claims Collection Standards (FCCS), which are issued jointly by the GAO and DOJ and the provisions of the Deficit Reduction Act of 1984 (31 U.S.C. 3702A) which authorize agencies to report discharged debts to the Internal Revenue Service (IRS) and which enable agencies to seek administrative offset of claims against tax refunds due to persons who owe debts to the agency.

Billing Procedures

The Commission is proposing to codify its tariff fee and insurance service billing terms and procedures in 49 CFR 1002.2. These proposed regulation provide that:

(1) Each account will have a specific billing date within a month;

(2) The billing date will be the date on which the bill is prepared or printed;

(3) A bill for each account that had activity during a billing cycle, which is the period between the billing date in one month and the billing date in the next month, will be sent within 5 days of the billing date each month;

(4) Payment will be due 20 days from the billing date;

(5) Payment received before the next billing date will be applied to the account; and

(6) Interest will accrue from the date on which the initial invoice is mailed at the current Treasury rate, prorated over the number of days in the billing cycle on all unpaid principal outstanding during the billing cycle.

The proposed regulations also add a requirement that an account holder, who files bankruptcy or is the subject of an involuntary bankruptcy proceeding, must notify the Commission of the filing of the bankruptcy petition. This is necessary so that the Commission will be able to suspend all collection activities against a bankrupt as required under 11 U.S.C. 362.

Returned Check Policy and Fees

The Commission also is proposing to codify its returned check policy by adding additional language to 49 CFR 1002.2. That policy provides that if a check submitted to the Commission for a filing fee, other than a tariff filing fee, or service fee is dishonored by a bank or financial institution, the Commission will notify the person who submitted the check that: (1) All work will be suspended on the proceeding until the check is made good; (2) that the replacement fee must be paid by certified or cashier's check or money order; (3) that a returned check charge of $6.00 plus any bank charges incurred by the Commission as a result of the dishonored check must be submitted with the filing fee which is outstanding; and (4) if payment is not made within the time specified by the Commission, the application, proceeding, or filing, other than a tariff filing, will be rejected, dismissed, or denied.

The proposed regulations also provide that a person who repeatedly submits bad checks to the Commission may be required to submit a certified or cashier check, or money order for all future filings.

Debt Collection Procedures

All agencies are required to develop debt collection regulations that are based on the FCCS (4 CFR parts 101–105). The Commission adopted debt collection regulations (49 CFR part 1017) for debts owed to the Commission by Commission employees. In this proceeding the Commission is proposing debt collection regulations in 49 CFR part 1018, which will govern debts owed to the Commission by entities or persons who are not Commission employees. These proposed regulations will enable the Commission to disclose debts to consumer reporting agencies; to use collection agencies to encourage payment of debts owed to the Commission; and to seek administrative offset against other funds, including IRS refunds, that may be owed to the debtor by another government agency.

Sanctions

The FCCS (4 CFR 102.9) encourages agencies to give serious consideration to the suspension or revocation of licenses or other privileges for any inexcusable, prolonged, or repeated failure of a debtor to pay a claim. Accordingly, in proposed 49 CFR 1018.25 the Commission proposes the sanctions for those who fail to pay tariff or insurance bills. These proposed sanctions are: (1) Accounts which are 90 days past due will be frozen; (2) account holders who fail to pay their debts may be suspended or prohibited from filing tariffs or submitting insurance filings; and (3) the ICC certificates, permits, or licenses granted to an account holder may be suspended or revoked if the account holder continues to refuse to pay debts to the Commission.

Before any tariff or insurance filing privilege or certificate, license, or permit is suspended or revoked, the Commission will issue to the account holder an order to show cause why the tariff or insurance filing privilege or any certificate, license, or permit should not be suspended or revoked.

If certificates, permits, or licenses are revoked for nonpayment of filing fees, it will not be possible to use the Commission reinstatement procedures to reactivate such certificates, permits, or licenses. An application with payment of the appropriate fees must be filed with the Commission, and all previous delinquent debts of the debtor must be paid to the Commission before the Commission will consider the new application. Also the Commission reserves the right to refuse to maintain an account which is repeatedly delinquent.

Interest, Penalties, and Administrative Charges

In 49 CFR 1018.30 the Commission proposes regulations which assess interest, penalties, and administrative costs on debt owed to the Commission in accordance with the guidance provided in the FCCS at 4 CFR 102.13. Interest will be charged on all accounts that are not paid timely, and interest will accrue from the date of the billing. The interest rate is based upon the rate of the current value of funds to the United States Treasury (the tax and loan account rate). The current rate of interest is six percent. A penalty charge of six percent a year will be assessed on any portion of a debt that is delinquent for more than 90 days. The Commission also will assess a debtor administrative charges to cover administrative costs incurred as a result of a delinquent debt. these administrative costs may include costs incurred in obtaining a credit report or in using a private debt collector, to the extent they are attributable to the delinquency.

Reporting Discharged Debt to the IRS and Offset Against Tax Refund

In 49 CFR 1018.80–81 the Commission is proposing to adopt procedures to report discharged debt to the IRS and to effect administrative offset against tax refunds due to the debtor under 26 U.S.C. 6402 in accordance with the provisions of the Deficit Reduction Act (31 U.S.C. 3702A).

Standardization of Tariff and Contract Transmittal Letter

The Commission is proposing minor changes in the Commission tariff and contract regulations which will standardize a transmittal letter to facilitate the processing of tariff filing fees. These proposed modifications will be made in 49 CFR 1312.4, 1313.7, and 1314.4.

Implementation Date for New Fee Billing and Collection Regulations

The Commission anticipates that these proposed fee billing and collection regulations will become effective in early 1993. During the first month in which these regulations are effective, all account holders will receive a bill which will state all outstanding charges and specify the payment due date for that account. If accounts are not paid in full by the appropriate date, then interest, penalties, and administrative costs will be assessed as set forth in 49 CFR part 1018.

The Commission's program to collect outstanding debts is ongoing. However, when these proposed regulations become effective, the Commission will use all additional means which these regulations provide to collect its delinquent accounts including referral of accounts to private collection agencies and referral of claims to DOJ for litigation. After these new regulations are in effect, the Commission will review the records of account holders, and where appropriate the Commission will institute proceedings to suspend or revoke certificates, permits, or licenses or filing privileges of those debtors who inexcusably or repeatedly fail or refuse to pay delinquent debts.

Modification of Application to Open an Account for Billing Purposes

Form SE–132, which is submitted to establish a tariff filing or an insurance service fee account, will be updated to reflect the fee and debt collection regulations which are proposed in this proceeding. A copy of the revised form is set forth in Appendix 1 of this notice. Because the responsibilities for the ICC's fee and debt collection program are being transferred to the Commission's Budget and Fiscal Office, the form number will be changed to Form ICC–1032, and the address information on the form will be changed to read: Chief, Budget and Fiscal Office, Interstate Commerce Commission, room 1330, Washington, DC 20423.

The form also will be modified to require an account holder to identify any ICC certificates, licenses, or permits which it holds. The Account and Debt Collection Policy statement on the form will be revised to mirror the debt collection regulations, which are proposed to be adopted in this proceeding, and to reference the proposed requirement that an account holder notify the Commission if it files a petition in bankruptcy or is the subject of a backruptcy proceeding.

This revised form will become effective when final rules are adopted in this proceeding. A current account holder will not be required to file this new application unless the account holder changes its name and/or address.

It is estimated that no additional burden hours per response are required to complete this revised collection of information. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The information collection requirements contained in this proposal will be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and 5 CFR part 1320. Respondents may direct comments concerning the paper work burden and burden estimates to the OMB and ICC by addressing them to:

Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Ed Clark, Desk Officer (Form 3120–1032), Washington, DC 20503

Interstate Commerce Commission, Attn: Forms Clearance Officer, room 1312, Washington, DC 20423

Regulatory Flexibility Statement

The adoption of these regulations will allow the Commission to continue to provide tariff filing and insurance service fee accounts which facilitate the filing of such documents with the Commission for many small entities. Because these proposed regulations codify the Commission's existing fee policies and adopt collection regulations, which are based on the FCCS issued jointly by GAO and DOJ, the Commission believes that these proposed regulations will not have a significant effect on a substantial number of small entities.

This decision will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

49 CFR Part 1018

Administrative offset, Claims.

49 CFR Part 1312

Freight forwarders, Motor carriers, Moving of household goods, Pipelines, Railroads Tariffs.

49 CFR Part 1313

Administrative practice and procedure, Agricultural commodities, Forests and forest products, Railroads.

49 CFR Part 1314

Freight forwarder, Motor carriers, Railroads, Tariffs.

Decided: August 27, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips and Emmett. Commissioner Simmons, joined by Vice Chairman McDonald, commented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X of the Code of Federal Regulations is proposed to be amended as follows:

PART 1002—FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701 and 49 U.S.C. 10321.

2. Section 1002.1 is proposed to be amended by revising paragraph (f)(11) to read as follows:

§ 1002.1 Fees for records search, review, copying, certification, and related services.

* * * * *

(f) * * *

(11) Interest charges will be assessed on any unpaid bill starting on the date specified in the bill, at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing. The Debt Collection Act, 5 U.S.C. 5514 (1982), including disclosure to the consumer reporting agencies and the use of collection agencies, as prescribed in the Commission's Debt Collection Regulations in 49 CFR part 1018, will be utilized to encourage payment where appropriate.

* * * * *

3. In § 1002.2 paragraphs (a) and (b) are proposed to be revised and a new paragraph (g) is added to read as follows:

§ 1002.2 Filing Fees.

(a) *Manner of payment.* (1) Except as specified in paragraphs (a)(1)(i) through (a)(1)(iii) of this section, all filing fees will be payable at the time and place the application, petition, notice, tariff, contract, or other document is tendered for filing.

(i) When emergency temporary operating authority [Item 9] and emergency temporary operating authority extensions [Item 10] are initiated by telegram or telephone, the fee or fees are due when the OCCA–95 application is submitted to the appropriate Commission regional office.

(ii) The filing fee for tariffs, rate schedules, and contracts including supplements [Item 74] may be charged to tariff filing fee accounts established by the Commission in accordance with paragraph (a)(2) of this section.

(iii) The service fee for insurance, surety or self-insurer accepted certificate of insurance, surety bond or other instrument submitted in lieu of a broker surety bond must be charged to an insurance service account established by the Commission in accordance with paragraph (a)(2) of this section.

(2) *Billing Account Procedure.* Form ICC–1032 must be submitted to the Commission's Budget and Fiscal Office to establish a tariff filing fee account or an insurance service fee account.

(i) Each account will have a specific billing date within each month and a billing cycle. The billing date is the date that the bill is prepared and printed. The billing cycle is the period between the billing date in one month and the billing date in the next month. A bill for each account which has activity or an unpaid balance during the billing cycle will be sent on the billing date each month. Payment will be due 20 days from the billing date. Payments received before the next billing date are applied to the account. Interest will accrue in accordance with 49 CFR 1018.30.

(ii) The Debt Collection Act, including disclosure to the consumer reporting agencies and the use of collection agencies, as prescribed in the Commission's Debt Collection Regulations in 49 CFR part 1018, will be utilized to encourage payment where appropriate.

(iii) An account holder who files a petition in bankruptcy or who is the subject of a bankruptcy proceeding must provide the following information to the Chief, Budget and Fiscal Office, Room 1330, Interstate Commerce Commission, Washington, DC 20423:

(A) The filing date of the bankruptcy petition;

(B) The court in which the bankruptcy petition was filed;

(C) The type of bankruptcy proceeding;

(D) The name, address, and telephone number of its representative in the bankruptcy proceeding; and

(E) The name, address, and telephone number of the bankruptcy trustee, if one has been appointed.

(3) Fees will be payable to the Interstate Commerce Commission by a check drawn upon funds deposited in a bank or other financial institution in the United States, a money order payable in U.S. currency, or a credit card (VISA or MASTERCARD).

(b) Any filing, other than a tariff filing fee that is not accompanied by the appropriate filing fee is deficient except for filings that satisfy the deferred payment procedures in paragraph (a) of this section.

* * * * *

(g) *Returned Check Policy.* If a check submitted to the Commission for a filing, other than a tariff filing fee, or service fee is dishonored by a bank or financial institution on which it is drawn, the Commission will notify the person who submitted the check that:

(1) All work will be suspended on the proceeding until the check is made good;

(2) That a returned check charge of $6.00 and any bank charges incurred by the Commission as a result of the dishonored check must be submitted with the filing fee which is outstanding; and

(3) If payment is not made within the time specified by the Commission, the proceeding will be dismissed.

4. Part 1018 is proposed to be added to read as follows:

PART 1018—DEBT COLLECTION

Subpart A—Application and Coverage

Sec.

Subpart B—Administrative Collection of Claims

Subpart C—Compromise of a Claim

Sec.

Authority: 31 U.S.C. 3701; 31 U.S.C. 3711 et seq.; 5 U.S.C. 553; 4 CFR parts 101–105; 49 U.S.C. 10321.

Subpart A—Application and Coverage

§ 1018.1 Application.

(a) This part applies to claims for the payment of debts owed to the United States Government in the form of money or property and unless a different procedure is specified in a statute, regulation, or a contractual agreement with the Commission, prescribes procedures by which the Commission:

(1) Collects, compromises, suspends, and terminates collection actions for claims;

(2) Determines and collects interest and other charges on these claims; and

(3) Refers unpaid claims to the General Accounting Office (GAO) and the Department of Justice (DOJ) for litigation.

(b) The following are examples of the kinds of debts to which special statutory and administrative procedures apply:

(1) A claim against an employee for erroneous payment of pay and allowances subject to waiver under 5 U.S.C. 5584 and other claims against employees which are handled under 49 CFR part 1017.

(2) A claim involving the payment of civil penalties or forfeitures which may arise under provisions of the Interstate Commerce Act or legislation supplemental thereto. Those claims are handled under procedures set forth in 49 CFR part 1021.

(3) A claim involved in a case pending before any Federal Contract Appeals Board or Grant Appeals Board. However, nothing in this part prevents negotiation and settlement of a claim pending before a Board.

§ 1018.2 Definitions.

(a) *Administrative offset* means withholding money payable by the United States to, or held by the Government for, a person to satisfy a debt the person owes the Government.

(b) *Claim* and *debt* are used synonymously and interchangeably for purposes of this part. These terms refer to an amount of money or property which has been determined by an appropriate agency official to be owed to the United States by any person, organization, or entity except another Federal agency.

(c) *Delinquent.* A debt is considered delinquent if it has not been paid by the date specified in the initial written demand for payment or applicable contractual agreement with the Commission, unless other satisfactory payment arrangements have been made by that date. If the debtor fails to satisfy an obligation under a payment agreement with the Commission after other payment arrangements have been made, the debt becomes a delinquent debt.

(d) *Payment in full* means payment of the total debt due the United States, including any interest, penalty, and administrative costs of collection assessed against the debtor.

§ 1018.3 Communications.

Unless otherwise specified, all communications concerning the regulations in this part should be addressed to Chief, Budget and Fiscal Office, Interstate Commerce Commission, room 1330, Washington, DC 20423.

§ 1018.4 Claims that are covered.

(a) These procedures generally apply to any claim for payment of a debt which:

(1) Results from activities of the Commission including fees imposed under 49 CFR part 1002; or

(2) Is referred to the Commission for collection.

(b) These procedures do not apply to:

(1) A claim based on a civil monetary penalty for violation of a requirement of the Interstate Commerce Act or an order or regulation of the Commission unless 49 CFR part 1021 provides otherwise;

(2) A claim as to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor, or any other party having an interest in the claim;

(3) A claim between Federal agencies; and

(4) A claim once it becomes subject to salary offset which is governed by 5 U.S.C. 5514.

§ 1018.5 Monetary limitation on Commission authority.

The Commission's authority to compromise a claim or to terminate or suspend collection action on a claim covered by these procedures is limited by 31 U.S.C. 3711(a) to claims that:

(a) Have not been referred to another Federal agency, including the GAO, for further collection action; and

(b) Do not exceed $100,000, exclusive of interest, penalties, and administrative costs (the monetary limitation).

§ 1018.6 Omissions not a defense.

(a) The failure of the Commission to include in this part any provision of the Federal Claims Collection Standards, 4 CFR Parts 101–105, does not prevent the Commission from applying these provisions.

(b) A debtor may not use the failure of the Commission to comply with any provision of this part or the Federal Claims Collection Standards as a defense to the debt.

§ 1018.7 Conversion claims.

These procedures are directed primarily to the recovery of money on behalf of the Government. The Commission may demand:

(a) The return of specific property; or

(b) Either the return of property or the payment of its value.

§ 1018.8 Subdivision of claims.

The Commission shall consider a debtor's liability arising from a particular transaction or contract as a single claim in determining whether the claim is less than the monetary limitation for the purpose of compromising or suspending or terminating collection action. A claim may not be subdivided to avoid the monetary limitation established by 31 U.S.C. 3711(a)(2) and § 1018.5 of this part.

Subpart B—Administrative Collection of Claims

§ 1018.20 Written demand for payment.

(a) The Commission shall make appropriate written demand upon the debtor for payment of money in terms which specify:

(1) The basis for the indebtedness and the right of the debtor to request review within the Commission;

(2) The amount claimed;

(3) The date by which payment is to be made, which normally should not be more than 30 days from the date that the initial demand letter statement was mailed, unless otherwise specified by contractual agreement, established by

Federal statute or regulation, or agreed to under a payment agreement;

(4) The applicable standards for assessing interest, penalties, and administrative costs (4 CFR 102.13 and 49 CFR 1830.25); and

(5) The applicable policy for reporting the delinquent debt to consumer reporting agencies.

(b) The Commission normally shall send three progressively stronger written demands at not more than 30-day intervals, unless circumstances indicate that alternative remedies better protect the Government's interest, that the debtor has explicitly refused to pay, or that sending a further demand is futile. Depending upon the circumstances of the particular case, the second and third demands may:

(1) Offer or seek to confer with the debtor;

(2) State the amount of the interest and penalties that will be added on a daily basis as well as the administrative costs that will be added to the debt until the debt is paid; and

(3) State that the authorized collection procedures include any procedure authorized in this part including:

(i) Contacts with the debtor's employer when the debtor is employed by the Federal Government or is a member of the military establishment or the Coast Guard;

(ii) Possible referral of the debt to a private agency for collection;

(iii) Possible reporting of the delinquent debt to consumer reporting agencies in accordance with the guidance and standards contained in 4 CFR 102.5 and the Commission's procedures set forth in § 1018.23 of this part;

(iv) The suspension or revocation of a license or other remedy under § 1018.25 of this part;

(v) Installment payments possibly requiring security; and

(vi) The right to refer claims to GAO or DOJ for litigation.

(c) The failure to state in a letter of demand a matter described in § 1018.20 is not a defense for a debtor and does not prevent the Commission from proceeding with respect to that matter.

§ 1018.21 Telephone inquires and investigations.

(a) If a debtor has not responded to one or more written demands, the Commission shall make reasonable efforts by telephone to determine the debtor's intentions. If the debtor cannot be reached by telephone at the debtor's place of employment, the Commission may telephone the debtor at his or her residence between 8 a.m. and 9 p.m.

(b) The Commission may undertake an investigation to locate a debtor, if the whereabouts of a debtor is a problem, or if a debtor cannot be contacted by telephone. The Commission may also send a representative to a debtor's place of employment if the debtor cannot be contacted by phone or the debtor does not respond to written demands by the Commission for payment of claims.

(c) The Commission under 15 U.S.C. 1681(f) may obtain consumer credit information from private firms, including name, address, former address, place of employment, and former place of employment of a debtor.

§ 1018.22 Personal interviews.

(a) The Commission may seek an interview with the debtor at the offices of the Commission when:

(1) A matter involved in the claim needs clarification;

(2) Information is needed concerning the debtor's circumstances; or

(3) An agreement of payment might be negotiated.

(b) The Commission shall grant an interview with a debtor upon the debtor's request. The Commission will not reimburse a debtor's interview expenses.

§ 1018.23 Use of consumer reporting agencies.

(a) In addition to assessing interest, penalties, and administrative costs under § 1018.30 of this part, the Commission may report a debt that has been delinquent for 90 days to a consumer reporting agency, if all the conditions of this paragraph are met.

(1) The debtor has not:

(i) Paid or agreed to pay the debt under a written payment plan that has been signed by the debtor and agreed to by the Commission; or

(ii) Filed for review of the debt under § 1018.23(a)(2)(iv) of this section.

(2) The Commission has included a notification in the third written demand (see § 1018.20(b)) to the debtor stating:

(i) That the account has been reviewed and payment of the debt is delinquent;

(ii) That, within not less than 60 days after the date of notification, the Commission intends to disclose to a consumer reporting agency that the individual is responsible for the debt;

(iii) The specific information to be disclosed to the consumer reporting agency; and

(iv) That the debtor has the right to a complete explanation of the debt (if that has not already been given), to dispute information on the Commission records about the debt, and to request reconsideration of the debt by administrative appeal or review of the debt.

(3) The Commission has sent at least one written demand by either registered or certified mail with the notification described in paragraph (a)(2) of this section.

(4) The Commission has reconsidered its initial decision on the debt when the debtor has requested a review under § 1018.26(a)(2)(iv).

(5) The Commission has taken reasonable action to locate a debtor for whom the Commission does not have a current address to send the notifications provided for in paragraph (a)(2) of this section.

(b) If there is a substantial change in the condition or amount of the debt, the Commission shall:

(1) Promptly disclose that fact(s) to each consumer reporting agency to which the original disclosure was made;

(2) Promptly verify or correct information about the debt, on request of a consumer reporting agency for verification of any or all information so disclosed by the Commission; and

(3) Obtain satisfactory assurances from each consumer reporting agency that they are complying with all applicable Federal, state, and local laws relating to its use of consumer credit information.

(c) The information the Commission discloses to the consumer reporting agency is limited to:

(1) Information necessary to establish the identity of the individual debtor, including name, address, and taxpayer identification number;

(2) The amount, status, and history of the debt; and

(3) The Commission activity under which the claim arose.

§ 1018.24 Contact with the debtor's employing agency.

If a debtor is employed by the Federal government or is a member of the military establishment or the Coast Guard, and collection by offset cannot be accomplished in accordance with 5 U.S.C. 5514, the Commission shall contact the employing agency to arrange with the debtor for payment of the indebtedness by allotment or otherwise.

§ 1018.25 Sanctions.

(a) *Closure of accounts.* If a tariff filing fee or insurance filing fee account is past due more than 90 days, the Commission will freeze the account until the account is made current. The Commission will notify the account holder that the account has been frozen and that until the account balance including any applicable interest.

penalties, and administrative costs are paid, all future filings, must be accompanied by a money order. The Commission reserves the right to refuse to maintain an account which is repeatedly delinquent.

(b) *Suspension or revocation of tariff or insurance filing privileges.* If the account holder fails to satisfy all claims for tariff or insurance filing fees including applicable interest, penalties, and the administrative costs of collection of the debt, the Commission may suspend or prohibit a tariff or insurance filing fee account holder from submitting tariff or insurance filings in its own name or on behalf of others.

(c) *Suspension or revocation of certificate, licenses, or permits granted by the Commission.* The Commission may suspend or revoke any certificates, permits or licenses which the Commission has granted to an account holder or other debtor for any inexcusable, prolonged, or repeated failure or refusal to pay a delinquent debt.

(d) *Procedures for suspension or revocation of filing privileges or certificates, licenses, or permits for failure to pay tariff or insurance filing fees.* Before suspending or revoking an account holder's privilege to submit tariff or insurance filings or suspending or revoking any certificate, license, or permit which the Commission has granted to any account holder, the Commission shall issue to the account holder an order to show cause why the tariff or insurance filing privilege or any certificate, license, or permit should not be suspended or revoked. The Commission shall allow the debtor no more than 30 days to pay the debt in full including applicable interest, penalties, and administrative costs of collection of the delinquent debt. The Commission may suspend or revoke any certificate, license, permit, approval or filing privilege at the end of this period upon a finding of willful noncompliance with the Commission's order. If any certificate, license, permit, or filing privilege is revoked under this authority of this part, a new application with appropriate fees must be made to the Commission, and all previous delinquent debts of the debtor to the Commission must be paid before the Commission will consider such application.

(e) *Other sanctions.* The remedies and sanctions available to the Commission in this area are not exclusive. The Commission may impose other sanctions, where permitted by law for any inexcusable, prolonged, or repeated failure of a debtor to pay such claim. In such cases, the Commission will provide notice and a hearing, as required by law, to the debtor prior to the imposition of any such sanctions.

§ 1018.26 Disputed debts.

(a) A debtor who disputes a debt shall explain why the debt is incorrect in fact or law within 30 days from the date that the initial demand letter was mailed. The debtor may support the explanation by submitting affidavits, statements certified under penalty or perjury, canceled checks, or other relevant evidence.

(b) The Commission may extend the interest waiver period as described in § 1018.37 pending a final determination of the existence or amount of the debt.

(c) The Commission may investigate the facts involved in the dispute and if necessary, the Commission may arrange for a conference at which the debtor may present evidence and arguments in support of the debtor's positions.

§ 1018.27 Contracting for collection services.

The Commission may contract for collection services in order to recover delinquent debts. However, the Commission retains the authority to resolve disputes, compromise claims, suspend or terminate collection action, and initiate enforced collection through litigation. When appropriate, the Commission shall contract in accordance with 4 CFR 102.6.

1018.28 Collection by administrative offset.

(a) The Commission may administratively undertake collection by offset on each claim which is liquidated or certain in amount in accordance with the guidance and the standards contained in 4 CFR 102.2, 102.3, and 102.4 and 5 U.S.C. 5514, as applicable. The Commission may not initiate administrative offset to collect a debt more than 10 years after the Government's right to the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known to the Commission.

(b) Collection by administrative offset of amounts payable from the Civil Service Retirement and Disability Fund, the Federal Employees Retirement System, or other similar fund is made pursuant to 4 CFR 102.4 and the provisions of paragraphs (d) of this section.

(c) Salary offset is governed by 5 U.S.C. 5514.

(d) The following procedures apply when the Commission seeks to collect a debt by offset against any payment to be made to a debtor or against the assets of a holder of a certificate, permit, license, or authorization issued by the Commission.

(1) Before the offset is made, the Commission shall provide the debtor written notice of the nature and amount of the debt and:

(i) Notice of the Commission's intent to collect the debt by offset;

(ii) An opportunity to inspect and copy Commission records pertaining to the debt;

(iii) An opportunity to request reconsideration of the debt by the Commission, or if provided for by statute, waiver of the debt;

(iv) An opportunity to enter into a written agreement with the Commission to repay or pay the debt, as the case may be;

(v) An explanation of the debtor's rights under this subpart; and

(vi) An opportunity for a hearing when required under the provisions of 4 CFR 102.3(c).

(2) If the Commission learns that other agencies of the Government are holding funds payable to the debtor, the Commission shall provide the other agencies with written certification that the debt is owed to the Commission and that the Commission has complied with the provisions of 4 CFR 102.3. The Commission shall request that funds due the debtor which are necessary to offset the debt to the Commission be transferred to the Commission.

(3) The Commission may accept a repayment or payment agreement, as appropriate, in lieu of offset, but will do so only after balancing the Government's interest in collecting the debts against fairness to the debtor. If the debt is delinquent and the debtor has not disputed its existence or amount, the Commission may accept a repayment or payment agreement in lieu of offset only if the debtor is able to establish under sworn affidavit or statement certified under penalty of perjury that offset would result in financial hardship or would result in undue financial hardship or would be against equity and good conscience.

(4) Administrative offset is not authorized with respect to:

(i) Debts owed by any State or local government;

(ii) Debts once they become subject to the salary offset provisions of 5 U.S.C. 5514; or

(iii) Any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by another statute.

(5) The Commission reserves the right to take any other action in respect to offset as is permitted under 4 CFR 102.3.

(e) The Commission shall make appropriate use of the cooperative efforts of other agencies including the Army Holdup List in effecting collections by offset. The Army Holdup List is a list of contractors indebted to the United States.

§ 1018.29 Payments.

(a) *Payment in full.* The Commission shall make every effort to collect a claim in full before it becomes delinquent. The Commission shall impose charges for interest, penalties, and administrative costs as specified in § 1018.30.

(b) *Payment in installments.* If a debtor furnishes satisfactory evidence of inability to pay a claim in one lump sum, payment in regular installments may be arranged. Evidence may consist of a financial statement or a signed statement certified under penalty of perjury to be true and correct that application for a loan to enable the debtor to pay the claim in full was rejected. Except for a claim described at 5 U.S.C. 5514, all installment payment arrangements must be in writing and require the payment of interest and administrative charges.

(1) Installment note forms including confess-judgment notes may be used. The written installment agreement must contain a provision accelerating the debt payment in the event the debtor defaults. If the debtor's financial statement discloses the ownership of assets which are free and clear of liens or security interests, or assets in which the debtor owns equity, the debtor may be asked to secure the payment of an installment note by executing a Security Agreement and Financial Statement transferring to the United States a security interest in the assets until the debt is discharged.

(2) If the debtor owes more than one debt and designates how a voluntary installment payment is to be applied among those debts, the Commission shall follow that designation. If the debtor does not designate the application of the payment, the Commission shall apply the payment to the various debts in accordance with the best interest of the United States as determined by the facts and circumstances of the particular case.

(c) *To whom payment is made.* Payment of a debt is made by check, money order, or credit card (VISA or MASTERCARD) payable to the Interstate Commerce Commission and mailed or delivered to the Budget and Fiscal Office, room 1330, Interstate Commerce Commission, Washington, DC 20423, unless payment is:

(1) Made pursuant to arrangements with the GAO or DOJ;

(2) Ordered by a Court of the United States; or

(3) Otherwise directed in any other part of this chapter.

§ 1018.30 Interest, penalties, and administrative costs.

(a) The Commission shall assess interest, penalties, and administrative costs on debts owed to the United States Government in accordance with the guidance provided under the Federal Claims Collection Standards, 4 CFR 102.13 unless otherwise directed by statute, regulation, or contract.

(b) Before assessing any charges on delinquent debts, the Commission shall mail a written notice to debtor explaining its requirements concerning these charges under 4 CFR 102.2 and 102.13.

(c) Interest begins to accrue from the date on which the initial invoice I first mailed to the debtor unless a different date is specified on a statute, regulation, or contract.

(d) The Commission shall assess interest based upon the rate of the current value of funds to the United States Treasury (the Treasury tax and loan account rate) prescribed by statute, regulation, or contract.

(e) Interest is computed only on the principal of the debt, and the interest rate remains fixed for the duration of the indebtedness, unless the debtor default on a repayment agreement and seeks to enter into a new agreement.

(f) The Commission shall assess against a debtor charges to cover administrative costs incurred a result of a delinquent debt. Administrative costs may include in obtaining a credit report or in using a private debt collector, to the extent they are attributable to the delinquency.

(g) The Commission shall assess a penalty charge of six percent a year on any portion of a debt that is delinquent for more than 90 days. The charge accrues retroactively to the date that the debt became delinquent.

(h) Amounts received by the Commission as partial or installment payments are applied first to outstanding penalty and administrative cost charges, second to accrue interest, and third to outstanding principal.

(i) The Commission shall waive collection of interest on the debt or any portion of the debt which is paid in full within 30 days after the date on which interest began to accrue.

(j) The Commission may waive interest during the period a debt disputed under § 1018.26 is under investigation or review before the Commission. This additional waiver is not automatic and must be requested before the expiration of the initial 30 day waiver period. The Commission may grant the additional waiver only when it finds merit in the explanation the debtor has submitted under § 1018.26.

(k) The Commission may waive the collection of interest, penalties, and administrative costs if it finds that one or more of the following conditions exists:

(1) The debtor is unable to pay any significant sum toward the debt within a reasonable time;

(2) Collection of interest, penalties, and administrative costs will jeopardize collection of the principal of the debt;

(3) The Commission is unable to enforce collection in full within a reasonable time by enforced collection proceedings; or

(4) Collection would be against equity and good conscience or not in the best interest of the United States, including the situation in which an administrative offset or installment payment agreement is in effect.

§ 1018.31 Use of credit reports.

The Commission may institute a credit investigation of the debtor at any time following receipt of knowledge of the debt in order to aid the Commission in making appropriate determinations as to:

(a) The collection and compromise of a debt;

(b) The collection of interest, penalties, and administrative costs;

(c) The use of administrative offset;

(d) The use of other collection methods; and

(e) The likelihood of collecting the debt.

§ 1018.32 Bankruptcy claims.

When the Commission receives information that a debtor has filed a petition in bankruptcy or is the subject of a bankruptcy proceeding, it shall suspend all collection actions against the debtor in accordance with 11 U.S.C. 362 and shall furnish information concerning the debt owed the United States to the Department of Justice's, Nationwide Central Intake Facility to permit the filing of a claim.

§ 1018.33 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt under this part, the Commission may send a written request to the

Secretary of the Treasury (or designee) in order to obtain a debtor's mailing address from the records of the Internal Revenue Service.

(b) The Commission may disclose a mailing address obtained under paragraph (a) of this section to other agents, including collection service contractors, in order to facilitate the collection or compromise of debts under this part, except that a mailing address may be disclosed to a consumer reporting agency only for the limited purpose of obtaining a commercial credit report on the particular taxpayer.

(c) The Commission and its agents, including consumer reporting agencies and collection services, must comply with the provisions of 26 U.S.C. 6103(p)(4) and applicable regulations of the Internal Revenue Service.

§ 1018.34 Additional administrative collection action.

Nothing contained in this part is intended to preclude any other administrative remedy which may be available.

Subpart C—Compromise of a Claim

§ 1018.50 When a claim may be compromised.

The Commission may compromise a claim not in excess of the monetary limitation if it has not been referred to GAO or DOJ for litigation. Only the Comptroller General of the United States or designee may effect the compromise of a claim that arises out of the exceptions made by the GAO in that account of an accountable officer, including a claim against the payee, prior to its referral by GAO for litigation.

§ 1018.51 Reasons for compromising a claim.

A claim may be compromised for one or more reasons set forth below:

(a) The full amount cannot be collected because:

(1) The debtor is unable to pay the full amount within a reasonable time; or

(2) The debtor refuses to pay the claim in full, and the Government is unable to enforce collection in full within a reasonable time; or

(b) There is a real doubt concerning the Government's ability to prove its case in Court for the full amount claimed, either because of the legal issues involved or a bona fide dispute as to the facts.

(c) The costs of collecting the claim do not justify the enforced collection of the full amount. The Commission shall apply this reason for compromise in accordance with the guidance in 4 CFR 103.4.

(d) The Commission shall determine the debtor's inability to pay, the Government's ability to enforce collection, and the amounts which are acceptable in compromise in accordance with the Federal Claims Collection Standards, 4 CFR part 103.

(e) Compromises payable in installments are discouraged, but, if necessary, must be in the form of a legally enforceable agreement for the reinstatement of the prior indebtedness less sums paid thereon. The agreement also must provide that in the event of default:

(1) The entire balance of the debt becomes immediately due and payable; and

(2) The Government has the right to enforce any security agreement.

§ 1018.52 Restrictions on the compromise of a claim.

(a) The Commission may not accept a percentage of a debtor's profits or stock in a debtor's corporation in compromise of a claim. In negotiating a compromise with a business concern, consideration is given to requiring a waiver of the tax-loss-carry-forward and tax-loss-carry-back rights of the debtor.

(b) If two or more debtors are jointly or severally liable, collection action is not withheld against one debtor until the other or others pay their share. The amount of a compromise with one debtor is not considered a precedent or as morally binding in determining the amount which will be required from other debtors jointly and severally liable on the claim.

§ 1018.53 Finality of a compromise.

An offer of compromise must be in writing and signed by the debtor. An offer of compromise which is accepted by the Commission is final and conclusive on the debtor and on all officials, agencies and courts of the United States, unless obtained by fraud, misrepresentation, the presentation of a false claim, or mutual mistake of fact.

Subpart D—Suspension or Termination of Collection Action

§ 1018.60 When collection action may be suspended or terminated.

The Commission may suspend or terminate collection action on a claim not in excess of the monetary limitation, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments, if any, if it has not been referred to GAO or DOJ for litigation.

§ 1018.61 Reasons for suspending collection action.

Collection action may be suspended temporarily:

(a) When the debtor cannot be located after diligent efforts and there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim considering the size of the claim and the amount which may be realized on it; or

(b) When the debtor owns no substantial equity in realty and is unable to make payments on the Government's claim or effect a compromise on it at the time but the debtor's future prospects justify retention of the claim for periodic review and action:

(1) The applicable statute of limitations has been tolled or started anew; or

(2) Future collection can be effected by offset notwithstanding the statute of limitations.

§ 1018.62 Reasons for terminating collection action.

Collection action may be terminated:

(a) When it becomes clear that the Government cannot collect or enforce collection of any significant sum from the debtor having due regard for the judicial remedies available to the Government, the debtor's future financial prospects, and the exemptions available to the debtor under State and Federal law;

(b) When the debtor cannot be located, there is no security remaining to be liquidated, the applicable statute of limitations has run and the prospects of collecting by offset, notwithstanding the bar of the statute of limitations, is too remote to justify retention of the claim; or

(c) When it is likely that the cost of collection action will exceed the amount recoverable.

§ 1018.63 Termination of collection action.

Collection action shall be terminated:

(a) Whenever it is determined that the claim is legally without merit; or

(b) When it is determined that the evidence necessary to prove the claim cannot be produced or necessary witnesses are unavailable and efforts to induce voluntary payments have been unavailing.

§ 1018.64 Transfer of a claim.

The Commission may transfer a claim to the GAO for advice when there is doubt whether collection action should be suspended or terminated.

Subpart E—Referral of a Claim

§ 1018.70 Prompt referral.

(a) A claim which requires enforced collection is referred to GAO or DOJ for litigation. A referral is made as early as possible consistent with aggressive collection action and, in, any event, well within the time required to bring a timely suit against the debtor. Ordinarily, referrals are made within 1 year of the Commission's final determination of the fact and the amount of the debt.

(b) When the merits of the Commission's claim, the amount owed on the claim, or the propriety of acceptance of a proposed compromise, suspension, or termination of collection actions is in doubt, the Commission shall refer the matter to GAO for resolution and instruction prior to proceeding with collection actions and/or referral to DOJ for litigation.

(c) The Commission may refer a claim to GAO or DOJ even though the termination of collection activity might otherwise be given consideration under § 1018.63 if:

(1) A significant enforcement policy is involved in reducing a statutory penalty or forfeiture to judgment; or

(2) Recovery of a judgment or a prerequisite to the imposition of administrative sanctions, such as suspension or revocation of a license or privilege of participating in a Government sponsored program.

(d) Once a claim has been referred to GAO or DOJ under this subpart, the Commission shall refrain from any contact with the debtor and shall direct the debtor to GAO or DOJ as appropriate, when questions concerning the claim are raised by the debtor. The Commission shall immediately advise GAO or DOJ, as appropriate, of any payments by the debtor.

§ 1018.71 Referral of a compromise offer.

The Commission may refer a debtor's firm written offer of compromise which is substantial in amount to GAO or to DOJ if the Commission is uncertain whether the offer should be accepted.

§ 1018.72 Referral to the Department of Justice.

(a) Claims for which the gross original amount is over $500,000 must be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530. Claims for which the gross original amount is $500,000 or less must be referred to the Department of Justice's Nationwide Central Intake Facility.

(b) A claim of less than $600, exclusive of interest, is not referred for litigation unless:

(1) Referral is important to a significant enforcement policy; or

(2) The debtor has the clear ability to pay the claim, and the government can effectively enforce payment.

(c) A claim on which the Commission holds a judgment is referred to DOJ for further action is renewal of the judgment lien or enforced collection proceedings are justified under the criteria discussed in this part.

(d) Claims must be referred to the Department of Justice in the manner prescribed by 4 CFR 105.2 Care must be taken to preserve all files, records, and exhibits on claims referred under paragraphs (a) and (b) of this section.

Subpart F—Internal Revenue Procedure

§ 1018.80 Reporting discharged debts to the Internal Revenue Service.

When the Commission discharges a debt for less than the full value of the indebtedness, it will report the outstanding balance discharged, not including interest to the Internal Revenue Service, using IRS Form 1099–G or any other form prescribed by the IRS; when:

(a) The principal amount of the debt not in dispute is $600 or more;

(b) The obligation has not been discharged in a bankruptcy proceeding; and

(c) The obligation is no longer collectible either because the time limit in the applicable statute for enforcing collection expired during the tax year, or because during the tax year a formal compromise agreement was reached in which the debtor was legally discharged of all or a portion of the obligation.

§ 1018.81 Offset against tax refund.

The Commission will take action to effect administrative offset against tax refunds due to debtors under 26 U.S.C. 6402 in accordance with the provisions of 31 U.S.C. 3720A and Treasury Department regulations.

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OR TARIFFS, SCHEDULES, AND RELATED DOCUMENTS

5. The authority citation for part 1312 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10762; 5 U.S.C. 553.

6. Section 1312.4 is proposed to be amended by redesignating existing paragraph (b)(2) as paragraph (b)(2)(i) and adding a new paragraph (b)(2)(ii) to read as follows:

§ 1312.4 Filing tariffs.

* * * * *

(b) * * *

(2)(i) * * *

(ii) A letter of transmittal shall clearly indicate in the upper left-hand corner thereof:

(A) The assigned alpha code of the carrier or agent issuing the tariff publication(s);

(B) The number of series transmitted;

(C) The filing fee enclosed, the account number to be billed, or the credit card to be charged; and

(D) The tariff transmittal number, if the filer utilizes transmittal numbers.

If the filing fee is charged to a credit card, the information must include the credit card number and expiration date, and an authorized signature.

* * * * *

PART 1313—RAILROAD CONTRACTS ENTERED INTO PURSUANT TO 49 U.S.C. 10713

7. The authority citation for part 1313 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10713; 5 U.S.C. 553.

8. Section 1313.7 is proposed to be amended by adding a new sentence to the end of paragraph (a)(6) introductory text and by adding paragraphs (a)(6)(i)–(iv) of that section to read as follows:

§ 1313.7 Contract filing, title pages and numbering.

(a) * * *

(6) * * *. Each transmittal letter shall clearly indicate in the upper left-hand corner thereof:

(i) The assigned alpha code of the issuing carrier;

(ii) The number of series transmitted;

(iii) The filing fee enclosed, the account number to be billed, or the credit card to be charged; and

(iv) The transmittal number if the filer utilizes transmittal numbers.

If the filing fee is charged to a credit card, the information must include the credit card number and expiration date, and an authorized signature.

* * * * *

PART 1314—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS AND RELATED DOCUMENTS

9. The authority citation for part 1314 continues to read as follows:

Authority: 49 U.S.C. 10321, 10708, 10761, and 10762; 5 U.S.C. 553.

10. Section 1314.4 is proposed to be amended by adding a new sentence to the end of paragraph (a) introductory text and by adding paragraphs (a)(1)–(4) of that section to read as follows:

§ 1314.4 Filing of tariffs.

(a) * * *. Each transmittal letter shall clearly indicate in the upper left-hand corner thereof:

(1) The assigned alpha code of the issuing carrier;

(2) The number of series transmitted;

(3) The filing fee enclosed, the account number to be billed, or the credit card to be charged; and

(4) The transmittal number if the filer utilizes transmittal numbers.

If the filing fee is charged to a credit card, the information must include the credit card number and expiration date, and an authorized signature.

* * * * *

[FR Doc. 92–21725 Filed 9–9–92; 8:45 am]

BILLING CODE 7035–01–M

Notices

Federal Register
Vol. 57, No. 176
Thursday, September 10, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Data Users Evaluation Survey.
Form Number(s): Will vary by survey.
Type of Request: New Collection.
Burden: 3,500 hours.
Number of Respondents: 7,000.
Avg Hours Per Response: 30 minutes.
Needs and Uses: The Census Bureau has become actively involved with the Total Quality Management effort and is anticipating a large number of requests for clearance of customer surveys. These surveys will be used by the Census Bureau to obtain feedback and information from customers to make quality improvements to products and services.
Affected Public: Individuals or households, State or local governments, Farms, Businesses or other for-profit institutions, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Frequency: On Occasion.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 3, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92-21730 Filed 9-9-92; 8:45 am]

BILLING CODE 3510-07-F

Bureau of Export Administration

Subcommittee on Export Administration of the President's Export Council; Partially Closed Meeting

Federal Register citation of previous announcement: 57 FR 38464 of August 25, 1992.

ACTION: Postponement of meeting.

The notice published on August 25, 1992 announced a meeting of the Subcommittee on Export Administration of the President's Export Council. The meeting has been postponed until further notice.

Dated: September 3, 1992.

James M. LeMunyon,

Acting Assistant Secretary for Export Administration.

[FR Doc. 92-21711 Filed 9-9-92; 8:45 am]

BILLING CODE 3510-DT-M

Economics and Statistics Administration

Advisory Committee of the Task Force for Designing the Year 2000 Census and Census-Related Activities for 2000-2009

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409) we are giving notice of a meeting of the Advisory Committee of the Task Force for Designing the Year 2000 Census and Census-Related Activities for 2000-2009. The meeting will convene on Friday, September 25, 1992, at The Holiday Inn—Eisenhower Metro, 2460 Eisenhower Avenue, Alexandria, Virginia 22314-4695.

The Advisory Committee is composed of a Chairperson, twenty-five member organizations, and eight *ex officio* members, all appointed by the Secretary of Commerce. The Advisory Committee will consider the goals of the census and user needs for information provided by the census, and provide a perspective from the standpoint of the outside user community on how proposed designs for the year 2000 Census realize those goals and satisfy those needs. The Advisory Committee shall consider all aspects of the conduct of the census of population and housing for the year 2000, and shall make recommendations for improving that census.

DATES: The meeting will begin at 9:30 a.m. and adjourn at 4:30 p.m. on Friday, September 25, 1992.

ADDRESSES: The meeting will take place at The Holiday Inn—Eisenhower Metro, 2460 Eisenhower Avenue, Alexandria, Virginia 22314-4695.

FOR FURTHER INFORMATION CONTACT: Persons wishing additional information regarding this meeting, or who wish to submit written statements or questions, may contact Thomas P. DeCair, Office of the Under Secretary, Economics and Statistics Administration, Department of Commerce, room 4838, Herbert C. Hoover Building, Washington, DC 20230. Telephone: (202) 377-3709.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include consideration of a final set of potential designs for the 2000 census, procedures for narrowing the designs to a limited number for testing in 1995, and other items that the Chair and Advisory Committee members deem appropriate for this meeting.

The meeting is open to the public. A brief period will be set aside for public comment and questions. However, persons with extensive questions or statements for the record must submit them in writing to the Commerce Department official named below at least three working days prior to the meeting.

Dated: September 1, 1992.

J. Antonio Villamil,

Under Secretary and Administrator, Economics and Statistics Administration.

[FR Doc. 92-21712 Filed 9-9-92; 8:45 am]

BILLING CODE 3510-EA-M

International Trade Administration

[A-549-502]

Certain Circular Welded Carbon Steel Pipes and Tubes From Thailand; Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On April 13, 1992, the Department of Commerce ("the Department") initiated an administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Thailand. The Department is now terminating this review.

BACKGROUND: On April 13, 1992, the Department of Commerce published in the **Federal Register** a notice of initiation of administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Thailand (57 FR 12797) at the request of a respondent, the Saha Thai Steel Pipe Co. Ltd. ("Saha Thai"). This notice stated that we would review information submitted by Saha Thai for the period March 1, 1991 through February 29, 1992. Saha Thai subsequently withdrew its request for review on July 10, 1992. Under § 353.22(a)(5) of the Department's regulations, a party requesting a review may withdraw that request no later than 90 days after the date of publication of the notice of initiation. Because Saha Thai's withdrawal occurred within the time frame specified in 19 CFR 353.22(a)(5), and no other interested party has requested an administrative review for this period, the Department is now terminating this review.

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION: Contact Alain Letort or Richard Weible, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 377-3793 or telefax (202) 377-1388.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to § 353.22(a)(5) of the Department's regulations (19 CFR 353.22(a)(5)).

Dated: September 2, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-21720 Filed 9-9-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-607]

Commercial Grade Amorphous Silica Filament Fabric From Japan; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on commercial grade amorphous silica filament fabric from Japan. Interested parties who object to this revocation must submit their comments in writing no later than September 30, 1992.

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On September 23, 1987, the Department of Commerce ("the Department") published an antidumping duty order on commerical grade amorphous silica filament from Japan (52 FR 35750). The Department has not received a request to conduct an administrative review of this duty order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity To Object

No later than September 30, 1992, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by September 30, 1992, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by September 30, 1992, we shall conclude that the order/finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: September 1, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-21722 Filed 9-9-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-028]

Roller Chain, Other Than Bicycle, From Japan; Preliminary Results of Antidumping Finding Administrative Review

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

ACTION: Notice of preliminary results of antidumping finding administrative review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping finding on roller chain, other than bicycle, from Japan. The review covers two manufacturers/ exporters of this merchandise to the United States, and the period April 1, 1990 through March 31, 1991.

We preliminarily determine that the dumping margins for Daido Kogyo Co., Ltd. (Daido) and Enuma Chain Manufacturing Co., Ltd. (Enuma) to be 0.02 percent and 0.00 percent, respectively. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION CONTACT: Tom Prosser or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 6808) the final results of its last administrative review of the antidumping finding on roller chain, other than bicycle, from Japan (38 FR 9226, April 12, 1973). In April 1991, the petitioner, the American Chain Administration, requested, in accordance with § 353.22(a)(1) of the Department's regulations (19 CFR

353.22(a)(1)), that we conduct an administrative review of the period April 1, 1990 through March 31, 1991. We published a notice of initiation of review on May 21, 1991 (56 FR 23271). A timely request for revocation of the antidumping finding was submitted by Daido and Enuma. The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of roller chain, other than bicycle, from Japan. The term "roller chain, other than bicycle," as used in this review, includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmission and/or conveyance. Such chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain.

This review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between the adjoining pitches. This review further covers chain model numbers 25 and 35. Roller chain is currently classified under the Harmonized Tariff Schedule (HTS) item numbers 7315.11.00 through 7616.90.00. HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers Daido and Enuma, both manufacturers/exporters of roller chain, other than bicycle, and the period April 1, 1990 through March 31, 1991.

United States Price

In calculating United States Price (USP), the Department used purchase price (PP) and exporter's sales price (ESP), both as defined in section 772 of the Tariff Act. For those sales made directly to unrelated parties prior to importation into the United States, we based USP on PP. PP was based on the packed, FOB Japanese port prices to unrelated purchasers in the United States. Where applicable, we made deductions for brokerage and handling, foreign inland freight, and bank charges. No other adjustments were claimed or allowed.

Where sales to the first unrelated purchaser occurred after importation into the United States, we based USP on ESP. We calculated ESP based on the packed, FOB customer's or Daido's warehouse price to unrelated purchasers in the United States. Where applicable, we made deductions for ocean freight, marine insurance, import duties, customs brokerage, U.S. inland freight, commissions, and U.S. indirect selling expenses. We disallowed a claimed deduction for antidumping-related legal expenses. No other adjustments were claimed or allowed.

Foreign Market Value

Because the home market was viable for both Daido and Enuma, the Department, where possible, used home market price to calculate foreign market value (FMV). Otherwise we used constructed value (CV) as defined in section 773 of the Tariff Act, as the basis for FMV.

Home market price was based on a packed, delivered price to unrelated purchasers in Japan. For PP comparisons, where applicable, we made deductions for inland freight. We also made adjustments, where applicable, for differences in packing and credit expenses. For ESP comparisons, we deducted inland freight and credit expenses, and, where applicable, we adjusted for differences in packing expenses. We also deducted indirect selling expenses, limited to the amount of U.S. commissions and U.S. indirect selling expenses. During verification Daido withdrew its claim for home market deductions for commissions, discounts, and rebates. No other adjustments were claimed or allowed.

Where there were no usable sales of such or similar merchandise for comparison, we used CV as the basis for FMV. We included the cost of materials, fabrication, general expenses, profit, and U.S. packing. We used: (1) Actual general expenses, or the statutory minimum of ten (10) percent of materials and fabrication, whichever was greater; (2) actual profit, or the statutory minimum of eight (8) percent of materials, fabrication costs, and general expenses, whichever was greater; and (3) packing costs for merchandise exported to the United States. Where appropriate, we made adjustments to CV, in accordance with 19 CFR 353.56, for differences in direct selling expenses. For comparisons involving ESP transactions, in accordance with 19 CFR 353.56(b)(2), we made further deductions from CV for indirect selling expenses and inventory carrying costs in the home market, capped by the indirect selling expenses and commissions incurred on ESP sales.

Preliminary Results of the Review

As a result of our comparison of USP to FMV, we preliminarily determine that the following weighted-average margins exists:

Manufacturer/exporter	Period	Margin (percent)
Daido Kogyo Co., Ltd	4/1/90-3/31/91	0.02
Enuma Chain Manufacturing Co., Ltd	4/1/90-3/31/91	0.00

On August 11, 1988, the Department published its tentative determination to revoke the antidumping finding with respect to Daido and Enuma (53 FR 30325) and, as a result, we are considering this tentative revocation under the pre-1989 regulations.

It was the Department's original intention to revoke the finding with respect to Daido and Enuma subsequent to completion of the administrative review of the 1986–1987 period, an "update" review period. However, in *Freeport Minerals Co.* v. *United States*, 776 F.2d 1029 (Fed. Cir., 1985), the Court of Appeals for the Federal Circuit emphasized the need to base revocation determinations on "current data", and held that such determinations should not be based on information more than three years old. By the time the final results of the 1986–1987 review were published (October 3, 1991, 56 FR 50092), the data on which the tentative revocation would be based were more than four years old. Accordingly, we concluded at that time that we would conduct a review of a more recent period before deciding whether to revoke the finding with respect to these two companies.

Pursuant to section 751(c) of the Tariff Act and 19 CFR 353.54(b) (1985), revocations may be extended based on at least two years of sales at either no margins or *de minimus* margins, the respondents' written agreements to an immediate suspension of liquidation and reinstatement in the finding should sales at less than fair value resume, and our determination that dumping by these firms is not likely to occur in the future. Daido and Enuma requested revocation of the finding and have agreed in writing to an immediate suspension of liquidation and reinstatement of the finding under circumstances specified in their written agreements with the

Department. However, because of confidential information in our possession, we are unable to make a determination at this time that sales at less than fair value will not occur in the future. Therefore, we will not consider revocation at this time.

Interested parties may request a disclosure within 5 days of publication and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but no later than 44 days after the date of publication or the first workday thereafter.

Case briefs and/or written comments on these preliminary results may be submitted not later than September 22, 1992. Rebuttal briefs and rebuttal comments, limited to the issues raised in the case briefs and comments, may be filed not later than September 29, 1992. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of roller chain, other than bicycle, from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed firms will be those established in the final results of this review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the original less-than-fair value investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, earlier reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, earlier reviews, or the original investigation, whichever is the most recent; (4) the cash deposit rate for any future entries from all other manufacturers or exporters, who are not covered in this or prior administrative reviews and who are unrelated to the reviewed firms or any previously reviewed firm, will be the "All Others" rate established in the final results of this administrative review, pending completion of additional reviews covering the same period. This rate represents the highest rate for any firm in this administrative review (whose shipments to the United States were reviewed), other than those firms receiving a rate based entirely on the best information available. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and 19 CFR 353.22.

Dated: September 2, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-21721 Filed 9-9-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-815]

Initiation of Changed Circumstances Countervailing Duty Administrative Reviews; Pure Magnesium and Alloy Magnesium From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION CONTACT: Rick Herring or Magd Zalok, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3530 or 377-4162, respectively.

INITIATION OF REVIEWS: In accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act), we are initiating changed circumstances administrative reviews of the countervailing duty orders on pure magnesium and alloy magnesium from Canada. In these reviews, we will determine whether the electricity contract between Norsk Hydro Canada Inc. (NHCI) and Hydro-Quebec continues to provide a countervailable benefit.

Pursuant to 19 CFR 355.22(h)(1), we believe that there are changed circumstances sufficient to warrant review of these orders. The major subsidy program investigated with respect to pure and alloy magnesium from Canada involved the power contract between NHCI and Hydro-Quebec, the provincially-owned utility. See, the Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada (57 FR 30946, July 13, 1992). In those determinations, we stated that NHCI was in the process of negotiating a Letter of Intent regarding an amendment to the company's electricity contract. We requested that NHCI place the Letter of Intent on the record of the investigations. NHCI complied with our request and submitted the Letter of Intent before that date of our final determinations. In their request for changed circumstances reviews, NHCI and the Governments of Canada and Quebec have stated that NHCI and Hydro-Quebec have amended their electricity contract. Furthermore, they claim that the amended contract conforms fully with the Letter of Intent which was examined by the Department during the course of suspension agreement negotiations. Thus, we conclude that changed circumstances sufficient to warrant review of these orders exist.

Further, in accordance with 19 CFR 355.22(h)(3), we also find that good cause exists to initiate these reviews at this time. As discussed above, we entered into negotiations to suspend these investigations based, in part, on the stated willingness of the parties to amend their electricity contract. Information on the record indicates that the parties have gone through with the amendment despite the fact that the investigations were not suspended and, thus, may have eliminated a major subsidy practice and irritant to trade between Canada and the United States. Second, novel and important issues regarding the countervailability of variable rate utility contracts were not resolved in our previous analysis. Given that these types of contracts may be used by many utilities, we believe that an expeditious review may remove the uncertainty created by our final determinations. Third, the changed

circumstances reviews would involve a single company, NHCI. Therefore, the conduct of the reviews would not impose an undue administrative burden on the Department.

This notice is published in accordance with 19 CFR 355.22(h)(1)(i).

Dated: September 2, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-21723 Filed 9-9-92; 8:45 am]

BILLING CODE 3510-DS-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Panel in the binational panel review of the final determination of injury made by the Canadian International Trade Tribunal (CITT) respecting Certain Beer Originating In or Exported From the United States of America by or on behalf of Pabst Brewing Company, G. Heileman Brewing Company, Inc. and The Stroh Brewery Company, their Successors and Assigns, for Use or Consumption in the Province of British Columbia (Secretariat File No. CDA-91-1904-02).

SUMMARY: By a decision dated August 26, 1992, the Binational Panel affirmed in part and remanded in part the final determination of injury made by the CITT respecting Certain Beer Originating In or Exported From the United States of America by or on behalf of Pabst Brewing Company, G. Heileman Brewing Company, Inc. and The Stroh Brewery Company, their Successors and Assigns, for Use or Consumption in the Province of British Columbia published in the Canada Gazette Part I on October 12, 1991 (Vol. 125, No. 41). A copy of the complete Panel decision is available from the Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The panel review in this matter was conducted in accordance with these Rules.

Background

Panel review was requested and complaints were filed by G. Heileman Brewing Company, Inc. (Heileman), The Stroh Brewery Company (Stroh), Pabst Brewing Company (Pabst) (collectively referred to as Complainants) to contest the CITT's final determination of injury. Labatt Breweries of British Columbia, Molson Breweries B.C., Ltd. and Pacific Western Brewing Companies (collectively referred to as B.C. Brewers) appeared in support of the CITT.

Complainants challenged the CITT decision on the grounds that the CITT incorrectly found that:

1. British Columbia (B.C.) constitutes an isolated market under subparagraph 1(ii) of Article 4 of the GATT Antidumping Code (Code), in view of the recent agreement contemplating the dismantling of interprovincial barriers to the Canadian domestic beer trade;

2. There was a concentration of dumped imports into the B.C. isolated market, in light of the limited penetration of dumped imports into the B.C. market and as a percentage of total beer imports into Canada;

3. The dumped imports are causing injury to the producers of all or almost all of the production within the B.C. market, because the CITT did not make a separate injury determination as to each of the three B.C. beer producers but only an aggregate injury determination; and

4. The cost of the switch in packaging of the beer from bottles to cans must be included as a factor in determining that the dumped imports were causing material injury to the producers of all or almost all of the production in the B.C. market because the switch from bottles to cans was due to consumer preference and not to dumping, i.e., underpricing by the imports.

Panel Decision

The Panel remanded, with instructions, to the CITT for a redetermination as to whether the dumping of imports, rather than the presence of dumped imports, is causing material injury to the producers of all or almost all of the production within the B.C. market. The Panel affirmed the CITT decision in all other respects.

The CITT was instructed to provide a Determination on Remand to the Panel within 75 days of the issuance of the decision (by not later than November 9, 1992).

Dated: September 3, 1992.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 92-21713 Filed 9-9-92; 8:45 am]

BILLING CODE 3510-GT-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Notice of Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Panel in binational panel review of the final results of the fifth administrative review of the countervailing duty order respecting Live Swine from Canada, made by the Department of Commerce, International Trade Administration, Import Administration (Secretariat File No. USA-91-1904-04).

SUMMARY: By a decision dated August 26, 1992, the Binational Panel affirmed in part and remanded in part the Department of Commerce's final determination respecting Live Swine from Canada published in the **Federal Register** on October 7, 1991 (56 FR 50560). A copy of the complete Panel decision is available from the FTA Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement")

establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country either review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review whether it conforms with the antidumping or countervailing duty of the law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Panel Review in this matter was conducted in accordance with these Rules.

Background

On October 11, 1991, the Canadian Pork Council (CPC) filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final results of the fifth administrative review of the countervailing duty order respecting Live Swine from Canada made by the Department of Commerce (Commerce), International Trade Administration, Import Administration, File No. C–122–404. In addition, the Government of Canada (Canada) and the Government of Quebec (Quebec) filed Requests for Panel Review in this matter.

In the proceedings before the Panel, Canada and the CPC challenged Commerce determinations regarding the National Tripartite Stabilization Scheme for Hogs (Tripartite). Tripartite is a farm income stabilization program funded by the Canadian Government, the Provincial Governments and farmers. The Government of Quebec challenged Commerce determinations regarding the Quebec Farm Income Stabilization Insurance Program (FISI). FISI is a provincial farm income stabilization program. In addition to its challenge to the Tripartite determinations, the CPC challenged Commerce determinations regarding (1) the Feed Freight Assistance Program (FFA); (2) the Alberta Crow Benefit Offset Program (ACBOP); and (3) the British Columbia Farm Income Insurance Plan—Swine Producers' Farm Income Stabilization Program FIIP). The FFA is a national grain transportation assistance program and ACBOP is a provincial program designed to compensate grain users in Alberta for the increased cost of grain resulting from the effect of the FFA on the grain market. FIIP is also a provincial farm income stabilization program.

Complainants contended that the Commerce determinations were not supported by substantial evidence on the record and were not otherwise in accordance with the law. Specifically, Complainants submitted, *inter alia*, that there were a number of findings upon which Commerce relied that were either not supported by substantial record evidence, or were contradicted by substantial record evidence that Commerce improperly ignored. Further, Complainants argued that Commerce had applied an inappropriate test for determining *de facto* specificity, and that it failed to provide a reasoned articulation of its determinations in the Final Results. In addition, Quebec argued that the counteravailability of FISI was a decided matter that Commerce was precluded from addressing. Complainant P. Quintaine & Son Ltd. (Quintaine) submitted further, that sows and boars were not within the scope of the Order. Likewise, Complainant Pryme Pork Ltd. (Pryme) argued that weanlings do not come within the scope of the Order. Alternatively, Pryme submitted that if weanlings were within the scope of the Order, then Commerce should have either established a separate rate and subclass for weanlings, or have assigned to Pryme a separate company rate on the basis that Pryme exported only weanlings to the United States during the Review Period.

Panel Decision

The Panel affirmed in part and remanded in part Commerce's final determinations. The Panel remanded by reconsideration some of Commerce's determinations regarding Tripartite, FISI, FIIP, ACBOP and the determination not to create a separate subclass for weanlings. The Panel affirmed Commerce in part in its determination regarding the FFA and its finding that sows and boars and weanlings were within the scope of the order.

Commerce was instructed to provide a determination on remand to the Panel within 60 days of this decision, (by not later than October 26, 1992).

Dated: September 3, 1992.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 92–21714 Filed 9–9–92; 8:45 am]

BILLING CODE 3510–GT–M

Minority Business Development Agency

Business Development Center Applications: Arizona IBDC

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its American Indian Program to operate an Indian Business Development Center (IBDC) for approximately a 3-year period, subject to Agency priorities, recipient performance, and the availability of funds. The cost of performance for the first budget period (12 months) is estimated at $197,825 in Federal funds. The Federal funds consist of a base amount of $193,000 and a $4,825 allowance for an audit fee. The period of performance will be from January 1, 1993 to December 31, 1993. The IBDC will operate in the Arizona Geographic Service Area.

The award number for this IBDC will be 09–10–93001–01.

The funding instrument for the IBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian Tribes and educational institutions.

The American Indian program is designed to provide business development services to the American Indian business community for the establishment and operation of viable American Indian businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of American Indian individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding American Indian business.

Applications will be evaluated initially by regional staff on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of American Indian businesses, individuals and

organizations, (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the American Indian program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

IBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. IBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an IBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an IBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with OMB Circular A–129, "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

The Department Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the IBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of IBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law. False information on the application can be grounds for denying or terminating funding.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

15 CFR part 28 is applicable and prohibits recipients of Federal contracts, grants, and cooperative agreements from using appropriated funds for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a specific contract, grant, or cooperative agreement. Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" and, when applicable, the SF–LLL, "Disclosure of Lobbying Activities," are required.

CLOSING DATE: The closing date for submitting an application is October 14, 1992. Applications must be postmarked on or before October 14, 1992.

Proposals will be reviewed by the San Francisco Regional Office. The mailing address for submission is: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, 415/744–3001.

A pre-application conference to assist all interested applicants will be held at the following address and time: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105. September 30, 1992 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Xavier Mena, Regional Director, San Francisco Regional Office at 415/744–3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained from the San Francisco Regional Office.

11.801 American Indian Program (Catalog of Federal Domestic Assistance)

Dated: September 2, 1992.

Linda Fraguela,

Acting Regional Director, San Francisco Regional Office.

[FR Doc. 92–21591 Filed 9–9–92; 8:45 am]

BILLING CODE 3510–25–M

Business Development Center Applications: California IBDC

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its American Indian Program to operate an Indian Business Development Center (IBDC) for approximately a 3-year period, subject to Agency priorities, recipient performance, and the availability of funds. The cost of performance for the first budget period (12 months) is estimated at $310,575 in Federal funds. The Federal funds consist of a base amount of $303,000 and a $7,575 allowance for an audit fee. The period of performance will be from January 1, 1993 to December 31, 1993. The IBDC will operate in the California Geographic Service Area.

The award number for this IBDC will be 09–10–93002–01.

The funding instrument for the IBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian Tribes and educational institutions.

The American Indian program is designed to provide business development services to the American Indian business community for the establishment and operation of viable American Indian businesses. To this end, MBDA-funds organizations that can identify and coordinate public and private sector resources on behalf of American Indian individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding American Indian business.

Applications will be evaluated initially by regional staff on the

following criteria; the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of American Indian businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the American Indian program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

IBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. IBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 to 4 additional budget periods, respectively. Under no circumstances shall an IBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an IBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with OMB Circular A–129, "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the IBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can caused termination are unsatisfactory performance of IBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law. False information on the application can be grounds for denying or terminating funding.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

15 CFR part 28 is applicable and prohibits recipients of Federal contracts, grants, and cooperative agreements from using appropriated funds influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a specific contract, grant, or cooperative agreement. Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" and, when applicable, this SF–LLL, "Disclosure of Lobbying Activities," are required.

CLOSING DATE: The closing date for submitting an application is October 14, 1992. Applications must be postmarked on or before October 14, 1992.

Proposals will be reviewed by the San Francisco Regional Office. The mailing address for submission is: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, 415/744–3001.

A pre-application conference to assist all interested applications will be held at the following address and time: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105. September 30, 1992 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Xavier Mena, Regional Director San Francisco Regional Office at 415/744–3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of applicable kits and applicable regulations can be obtained from the San Francisco Regional Office.

11.801 American Indian Program (Catalog of Federal Domestic Assistance)

Dated: September 2, 1992.

Linda Fraguela,

Acting Regional Director, San Francisco Regional Office.

[FR Doc. 92–21592 Filed 9–9–92; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Endangered Species; Issuance of Permit; Robert van Dam, Physiological Research Laboratory, Scripps Institution of Oceanography, University of California (P#790)

On April 28, 1992, notice was published in the **Federal Register** (57 FR 17895) that a permit application (P#509) had been filed by Robert van Dam, Physiological Research Laboratory, Scripps Institution of Oceanography, University of California, La Jolla, California 92092–0204, for a permit to take hawksbill sea turtles, *Eretmochelys imbricata*, directly within and adjacent to the reefs of Mona Island. Authorization for the direct take of 40 sea turtles, through the use of SCUBA, snorkeling gear, or by leaping from a boat to capture the animal by hand, is provided in the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) regulations governing endangered fish and wildlife permits (50 CFR part 217–222).

The information collected under this permit will be assessed to increase our understanding of the ecological role of juvenile and subadult hawksbill sea turtles in the reef environment. The research will focus, more specifically, on the species' dietary habits and foraging patterns. Permit issuance will allow for the take of up to 40 hawksbill sea turtles (*Eretmochelys imbricata*) to be measured, tagged, photographed, and sampled for stomach contents for the

period of July 1, 1992, through December 30, 1992. All of the research activities conducted during this period will take place at Mona Island, Puerto Rico.

Notice is hereby given that on September 2, 1992, as authorized by the provisions of the ESA, NMFS issued a permit for the above taking, subject to certain conditions set forth therein.

Issuance of this permit, as required by the ESA is based on the finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the modification; and (3) will be consistent with the purposes and policies set forth in section 2 of the ESA.

This permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR of the NMFS regulations governing endangered species permits.

The Permit is available for review in the following offices:

Office of Protected Resources, NOAA/NMFS, 1335 East-West Highway, SSMC#1, room 8268, Silver Spring, Maryland 20910, (301/713–2289); and

Director, Southeast Region, NOAA/NMFS, 9450 Koger Boulevard, room 206, St. Petersburg, Florida 33702.

Dated: September 2, 1992.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 92–21667 Filed 9–9–92; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

September 3, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6717. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 338/339 and 638/639 are being increased for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 58559, published on November 20, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 3, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 15, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on September 3, 1992, you are directed to amend further the directive dated November 15, 1992 to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Thailand:

Category	Adjusted twelve-month limit [1]
Sublevels in Group II	
338/339	1,510,320 dozen.
638/639	1,780,020 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–21729 Filed 9–9–92; 8:45 am]

BILLING CODE 3510–DR–F

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 92–1–90CD]

1990 Cable Royalty Distribution Proceeding

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of partial distribution.

SUMMARY: The Tribunal announces that a 90 percent partial distribution of the 1990 cable copyright royalty funds will be made.

DATES: The partial distribution of the cable copyright royalties will take place on September 17, 1992.

FOR FURTHER INFORMATION CONTACT: Barbara Gray, Office Manager, Copyright Royalty Tribunal, 1825 Connecticut Avenue, #918, Washington, DC 20009, (202) 606–4400.

SUPPLEMENTARY INFORMATION: On July 31, 1992, the Tribunal published in the **Federal Register** a notice requesting comments regarding a request for a 90 percent distribution of the 1990 cable copyright royalty fund. The parties seeking distribution are all of those parties who had participated in the previous year's distribution, 1989, the Program Suppliers, National Association of Broadcasters, Joint Sports Claimants, Public Television Claimants, Canadian Claimants, American Society of Composers Authors and Publishers, Broadcast Music Inc., SESAC Inc., National Public Radio and the Devotional Claimants, all hereafter referred to as the moving parties. 57 FR 33944. On August 14th, the British Broadcasting Corporation (B.B.C.) filed comments in opposition to a preliminary distribution. BBC, a new claimant, objects that the preliminary distribution being sought is limited to those who previously participated in the 1989 cable royalty distribution and contends that no statutory authority exists for such a procedure. B.B.C. further contends that any such distribution would unfairly prejudice the positions of small parties.

The Tribunal has on numerous past occasions made partial distributions, as the moving parties cited in their reply of August 26, 1992, based upon the authority found in their reply of August 26, 1992, based upon the authority found in 17 U.S.C. 111(d). This long established practice, which has been reviewed by

the Court of Appeals, has been employed in several instances where not all the parties agreed to a partial distribution. See 51 FR 44331 and 54 FR 16386.

In those past situations, as well as in the present one, where there is a new claimant for whom the Tribunal has no prior experience, determining how much to distribute can be problematic. The Tribunal notes, however, that no offering has been made of the amount of the potential B.B.C. claim, nor has any suggestion been made that it would be in the area of 10 percent. The Tribunal further notes that only two of the past parties, participating in the 1989 proceeding, received more than a 10 percent award.

The Tribunal, thus, has determined in this case that it will distribute 90 percent of the fund to the moving parties while retaining 10 percent to satisfy the claims of remaining claimants. It is emphasized that this decision is not in any sense a determination of the ultimate award the Tribunal expects to make, and not a predetermination of the merits of B.B.C.'s case. Further, should the final award to B.B.C. exceed 10 percent, reimbursement from the other claimants shall be the amount owed plus the interest that would have accrued had the royalties remained with the Copyright Office. Similar procedures will be followed should the final award necessitate re-distribution of the 90 percent among the moving parties.

Accordingly, a 90 percent distribution of the 1990 cable copyright royalty funds is ordered distributed to the moving parties on September 17, 1992.

Dated: September 4, 1992.

Cindy Daub,

Chairman.

[FR Doc. 92-21827 Filed 9-9-92; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

US Strategic Command Strategic Advisory Group; Closed Meeting

AGENCY: USSTRATCOM, Department of Defense.

ACTION: Notice of closed meeting.

SUMMARY: The CINCSTRATCOM has scheduled a closed meeting of the Strategic Advisory Group.

DATE: The meeting will be held from 28 to 30 October 1992.

ADDRESSES: The meeting will be held at Offutt AFB, Nebraska.

FOR FURTHER INFORMATION CONTACT: USSTRATCOM Strategic Advisory Group, Offutt AFB, Nebraska 68113.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss strategic issues that relate to the development of the Single Integrated Operational Plan (SIOP). Full development of the topics will require discussion of information classified TOP SECRET in accordance with Executive Order 12356, 2 April 1982. Access to this information must be strictly limited to personnel having requisite security clearances and specific need-to-know. Unauthorized disclosure of the information to be discussed at the SAG meeting could have exceptionally grave impact upon national defense. Accordingly, the meeting will be closed in accordance with 5 U.S.C. App II Para 10(d) (1976), as amended.

Dated: September 3, 1992.

Linda M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-21677 Filed 9-9-92; 8:45 am]

BILLING CODE 3810-01-M

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program Between the United States Department of Housing and Urban Development and the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of a computer matching program between the United States Department of Housing and Urban Development (HUD) and the Department of Defense (DoD) for public comment.

SUMMARY: The DoD, as the matching agency under the Privacy Act of 1974, as amended (5 U.S.C. 552a), is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between HUD and DoD that their records are being matched by computer. The purpose of the match is to identify tenants of public housing who are receiving excess housing assistance resulting from unreported or underreported family income and to verify continuing eligibility in HUD's assisted housing programs. Collections of excess assistance and appropriate legal or administrative actions will be taken against tenants who falsely report or fail to report their income.

DATES: This proposed action will become effective October 13, 1992, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 400 Army Navy Drive, Room 205, Arlington, VA 22202-2884.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr., (703) 614-3027.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DoD and HUD have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies to identify tenants in public housing programs who may not be reporting income or may be underreporting income, to verify eligibility for public housing assistance, to collect excess assistance from tenants, and to initiate appropriate legal action against tenants who falsely report or fail to report their income. This match will also identify individuals who have reported invalid social security numbers (SSN) and to notify public housing authorities (PHA) and subsidized multifamily projects owners of invalid SSNs so they may request tenants take action to obtain correct SSNs.

The parties to this agreement have determined that a computer matching program is the most efficient, effective and expeditious method of determining instances where individuals fail to report employment to the PHAs or subsidized multifamily project owner or management agent or underreport wages. Without a computer matching program, HUD and PHAs would have to rely on voluntary disclosure and reporting of wages and unemployment benefits by tenants in HUD housing programs to verify eligibility and determine underreported or unreported income.

Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion on the personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best choice and least obtrusive manner for accomplishing this requirement.

A copy of the computer matching agreement between HUD and DoD is available upon request. Requests should be submitted to the address caption above or to the Assistant Inspector

General for Management and Policy, United States Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Set forth below is a notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on Computer Matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement as required by 5 U.S.C. 552a(r) and an advance copy of this notice was submitted on August 21, 1992, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records about Individuals," dated December 12, 1985 (50 FR 52738, December 24, 1985). This matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: September 1, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

COMPUTER MATCHING PROGRAM BETWEEN THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF DEFENSE FOR VERIFICATION OF ELIGIBILITY FOR HOUSING ASSISTANCE

A. Participating Agencies: Participants in this computer matching program are: United States Department of Housing and Urban Development (HUD) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The HUD is the source agency, i.e., the agency disclosing the records for the purpose of the match. The DMDC is the specific recipient agency or matching agency, i.e., the agency that actually performs the computer matching.

B. Purpose of the match: The purpose of the match is to identify tenants of public housing who are receiving excess housing assistance resulting from unreported or underreported family income and to verify continuing eligibility in HUD's assisted housing programs. Collections of excess assistance and appropriate legal or administrative actions will be taken aga.nst tenants who falsely report or fail to report their income.

The matching program will be performed to detect unwarranted benefit payments under the National Housing Act, 12 U.S.C. 1701–1750g; the United States Housing Act of 1937, 42 U.S.C. 1437o; and Section 101 of the Housing and Community Development Act of 1965, 12 U.S.C. 1701s. Such unwarranted benefits may be paid when family income is unreported or underreported, causing rental assistance payments to be set unduly low, and housing subsidies to be set correspondingly too high.

Based on experience, HUD and DMDC expect a computer matching program is the most effective and expedient way to identify tenants in public housing programs who may not be reporting income or may be underreporting income, to verify eligibility for public housing assistance, to collect excess assistance from tenants, and to initiate appropriate legal action against tenants who falsely report or fail to report their income. This match will also identify individuals who have reported invalid social security numbers (SSN) and to notify public housing authorities (PHA) and subsidized multifamily projects owners of invalid SSNs so they may request tenants take action to obtain correct SSNs. HUD expects to recoup approximately $360,000 in excess housing assistance. All recoveries will be reused as housing benefits for eligible families.

C. Authority for conducting the match: Section 904 of Public Law 100–628; 5 U.S.C. App 4(a); section 165 of Public Law 100–242; 12 U.S.C. 1701–1750g; 42 U.S.C. 1437–1437o; and 12 U.S.C. 1701s, contain the legal authority for conducting the matching program.

D. Records to be matched: The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. HUD will use the system of records identified as HUD–11, "Multifamily Tenant Characteristics Data", last published in the **Federal Register** at 55 FR 42909 on October 24, 1990. The system of records notice contains an appropriate routine use for disclosure for this purpose. There are approximately 55,300 records in the HUD–11 system.

2. The DoD system of records is S322.10 DMDC, "Defense Manpower Data Center Data Base", published at 57 FR 2715 on January 23, 1992. The DMDC files contain information on 5 million active, retired, and reserve military members and DoD civilian personnel.

E. Description of computer matching program: DMDC will compare information from the HUD file with the defense manpower database files.

The files to be provided by HUD contain the following data elements: (1) SSNs for each family member; (2) family control number to identify each tenant with a particular family; (3) Head of Household Indicator; (4) Last Name, First Name, Middle Initial, and Address for household; (5) Sex; (6) Birth Date; (7) Reported Income by source, description and amount; (8) Program Code; and (9) Recertification Date.

For matched employee SSNs (i.e. "hits") the DOD will disclose to HUD the following information from its file: name mismatch flag, service flag, SSN, Name, Date of Birth, Service Pay Plan, Pay Grade/Rank, Annual Salary, Retirement Flag, Personnel Office Identifier, agency flags, Bureau, Expiration of Term of Service/Date of Commission, Unit Identification Code, Current Pay Status, Annual gross Pay, Monthly VA Award, Reserve Category, Retired Monthly Gross Annuity, Sex, Address, Death Source, Death Name, Death DOB and Death Date.

Records matching on the Social Security Number will be sent to HUD which will screen the initial data, verify that the matched data are consistent with the source file, and resolve any discrepancies or inconsistencies on an individual basis. HUD will verify the match results by reviewing the information in the actual case file before an adverse action is taken.

Each individual identified as underreporting their income will be afforded all applicable due process standards including, but not limited to, being given an opportunity to contest the findings and proposed actions.

F. Inclusive dates of the matching program: This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective. The respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time. Under no circumstances shall the matching program be implemented before this 30 day public

notice period for comment has elapsed as this time period cannot be waived. By agreement between HUD and DoD, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. Address for receipt of public comments or inquiries: Director, Defense Privacy Office, 400 Army Navy Drive, Room 205, Arlington, VA 22202–2884. Telephone (703) 614–3027.

[FR Doc. 92–21676 Filed 9–9–92; 8:45 am]

BILLING CODE 3810–01

Department of the Army

Patent and Patent Applications Available for Licensing

AGENCY: Department of the Army, Office of the Judge Advocate General, Intellectual Property Law Division, DOD.

ACTION: Notice.

SUMMARY: U.S. Patent No. 4,843,114 entitled "Rubber Compound for Tracked Vehicle Track Pads" and related U.S. Patent Application SN 07/793,074 filed 04 March 1992; foreign counterparts European Application No. 89300778.1 with designated countries of Austria, United Kingdom, Germany, France, and Sweden; Israeli Application No. 89,074; and Canadian Application No. 589,208 are all available for licensing.

FOR FURTHER INFORMATION CONTACT: Commander, U.W. Army Belvoir R, D, & E Center, ATTN: SATBE–D (Karen Gordon), Fort Belvoir, Virginia 22060–5606, telephone: 703–704–2279.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–21917 Filed 9–9–92; 8:45 am]

BILLING CODE 3710–08–M

Department of the Army, Corps of Engineers

Availability of a Joint Draft Environmental Impact Statement/ Environmental Impact Report (EIS/ EIR) for the Proposed Bolsa Chica Project Orange County, California

AGENCY: U.S. Army Corps of Engineers, Los Angeles District (Federal); City of Huntington Beach (State).

ACTION: Notice of availability of a Joint Draft Environmental Imapct Statement/ Environmental Impact Report (DEIS/ EIR).

SUMMARY: The proposed Bolsa Chica Project area consists of approximately 1,712.3 acres of land located primarily in an unincorporated region within Orange County, California. The project area consists of the Bolsa Chica Mesa, portions of the Huntington Beach Mesa and the Bolsa Chica lowlands. The lowland area of the project site primarily consists of the Bolsa Chica Wetlands. The majority of the area is privately owned by Signal Landmark Company with Koll Company as Managing Agent. Other property owners include the Fieldstone Development Company, the City of Huntington Beach, the Ocean View School District, Donald Goodell, the Huntington Beach Company and the State of California.

An application has been filed by the Koll Company with the U.S. Army Corps of Engineers, Los Angeles District, for permits to dredge and fill waters of the United States pursuant to the Clean Water Act, section 404, and the Rivers and Harbors Act of 1899, section 10. The Applicant proposes to fill 134.6 acres of jurisdictional wetlands including the Fieldstone parcel and to facilitate the reintroduction of a 1,020 acre natural tidal marsh to the Bolsa Chica lowland and wetlands. Additional features of the proposed project include flood control improvements and construction of a regional roadway.

To facilitate restoration of the wetlands, approximately 775 acres of privately owned sections of the Bolsa Chica lowland would be transferred to public ownership by the landowner(s). A portion of the wetlands/lowlands would be restored by the applicant as mitigation for impacts associated with construction of the residential community in the wetland/lowland. The remainder of the wetlands would be available for restoration by third party restorers. Construction of the roadway is independent of the proposed development and restoration elements of the project.

The Corps of engineers intends to utilize the DEIS/EIR as part of its permit evaluation and decision-making process. The City of Huntington Beach will use the DEIS/EIR as part of its planning and permitting process. The primary purpose of the DEIS/EIR is to assess the potential environmental impacts associated with the proposed residential development and wetlands restoration and an array of alternative plans. The document also identifies and evaluates proposed mitigation for adverse impacts associated with the proposed project and alternative plans. The Corps is the Federal Lead Agency consistent with the National Environmental Policy Act (NEPA). The City of Huntington Beach is the State Lead Agency consistent with the California Environmental Quality Act (CEQA).

Comments concerning the Draft EIS/ EIR should be provided within ninety (90) days and addressed to: District Engineer, U.S. Army Corps of Engineers, Los Angeles District, Attn: Mr. Frank Piccola, Environmental Resources Branch, 300 North Los Angeles Street, Los Angeles, California 90012–2325, (213) 894–0244.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The primary purpose of the proposed project is the construction of a residential community and related infrastructure on 118 acres of jurisdictional wetlands located in the Bolsa Chica lowland, the conveyance of 775 acres of lowland to public ownership to facilitate restoration, and the restoration of lowland area and the Applicant to mitigate for construction impacts. The project scope also includes the public agency actions required to amend local plans and to comply with State and Federal law and environmental regulatory programs. The residential construction on jurisdictional wetlands requires specific permit action (approval or disapproval) by the Corps.

2. Study Alternatives

The DEIS/EIR addresses a wide array of alternatives including the Proposed project.

3. Scoping Process

The purpose of this Notice is to advise interested persons of the availability of the DIES/EIR for public review and comment. Potentially significant issues identified to date include impacts to air quality, oceanographic and water resources, geology and seismicity, public services and utilities, transportation and circulation, biological resources and endangered species, land use, recreation, energy, public health and safety, aesthetics, noise, socioeconomic, and cultural resources. The DEIS/EIR includes the analysis of the above proposed project and alternatives; measures to avoid, minimize and/or mitigate for significant impacts which may result from project implementation; and the cumulative effects of the proposed action on the region.

A scoping meeting was held on April 23, 1991. The comments received during the scoping process were considered during the preparation of this DEIS/EIR. An extensive mailing list is being developed which includes Federal, state, and local agencies and other interested public and private organizations and

persons. Formal coordination with appropriate Federal, state, and local agencies will continue according to the requirements of NEPA and other applicable law.

4. Public Hearing(s)

A Public Hearing(s) will be held during the review period of the DEIS/EIR. Specific meeting date(s), time(s) and place(s) will be published in local newspapers and furnished to those on the mailing list.

5. Availability of the Draft EIS/EIR

The DEIS/EIR is available to the public for a ninety (90) day period from the date of publication in the **Federal Register**. Copies have been provided to concerned agencies and persons on the mailing list and are available for review at the Huntington Beach Main and Branch Libraries, Huntington Beach City Hall and the Corps of Engineers, Los Angeles District Offices.

Dated: August 28, 1992.

R.L. VanAntwerp,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 92-21741 Filed 9-9-92; 8:45 am]

BILLING CODE 3710-KF-M

Inland Waterways Users Board Meeting

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with paragraph 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following committee meeting:

Name of the Committee: Inland Waterways Users Board.

Date of the Meeting: October 9, 1992.

Place: Radisson Hotel Huntington, 1001 3rd Avenue, Huntington, West Virginia 25701 (Tel: 304-525-1001).

Time: 8:30 am to 5 pm.

Proposed Agenda:

AM Session

8:30 Registration
9:00 Welcoming Remarks
9:05 Business Session
—Administrative Announcements
—Chairman's Call to Order
—Executive Director's Comments
—Approval of Prior Meeting Minutes
9:30 Trust Fund Analysis
9:45 Innovative Design and Construction Techniques
10:00 Break
10:30 Huntington District Commander Remarks
10:45 Ohio River Division Navigation Program
11:00 Sargent Beach Project Update
11:15 Introduction to the Annual Report
12:00 Lunch

PM Session

1:30 Annual Report Recommendations
3:00 Break
3:30 Annual Report Recommendations (Continued)
4:00 Public Comment Period
5:00 Introductions to Board Staff/Adjourn

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Sanford, Jr., U.S. Army Corps of Engineers, CECW-P, Washington, DC 20314-1000.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-21740 Filed 9-9-92; 8:45 am]

BILLING CODE 3792-10-M

DEPARTMENT OF ENERGY

Determination to Re-establish the Secretary of Energy Advisory Board Task Force on Energy Research Priorities

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (FACA) (Pub. L. 92-463), and in accordance with 41 CFR subpart 101-6.10, and following consultation with the Committee Management Secretariat, General Services Administration (GSA), notice is hereby given that the Secretary of Energy Advisory Board (SEAB) Task Force on Energy Research Priorities has been re-established for an additional year.

The committee will provide advice to the Secretary of Energy on priorities and program balance for the budget of the Office of Energy Research of the Department of Energy.

The membership of the Task Force shall include approximately 25 individuals, selected on the basis of their professional experience and broad competence in areas related to science and technology. Appointments will be made for up to 1 year. Particular attention will also be paid to obtaining a balance of interests, points of view, and geography.

The re-establishment of the SEAB Task Force on Energy Research Priorities has been determined necessary and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Task Force will operate in accordance with the provisions of FACA, the Department of Energy Organization Act, the GSA Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

Further information regarding this advisory committee can be obtained from Rachel Murphy (202/586-3279).

Issued in Washington, DC on September 3, 1992.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 92-21807 Filed 9-9-92; 8:45 am]

BILLING CODE 6450-01-M

Morgantown Energy Technology Center; Cooperative Agreement; Financial Assistance Award to Institute of Gas Technology

AGENCY: Morgantown Energy Technology Center, Department of Energy (DOE).

ACTION: Notice of acceptance of an unsolicited financial assistance application for cooperative agreement award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i)(B) the DOE, Morgantown Energy Technology Center gives notice of its plans to award a 36 month Cooperative Agreement to the Institute of Gas Technology (IGT) with an associated budget of approximately $2.5M of which the Gas Research Institute (GRI) will cost share approximately 50 percent.

FOR FURTHER INFORMATION CONTACT: Laura E. Brandt, I-07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507-0880, Telephone: (304) 291-4079, Procurement Request No. 21-92MC28178.000.

SUPPLEMENTARY INFORMATION: The pending award is based on an application for the project entitled "Evaluation of High-Efficiency Gas-Liquid Contactors for Natural Gas Processing." This project involves a technology base program that will lead to the further development of a rotating, gas-liquid, novel contactor that has the potential of increased capacity, increased efficiency, reduced equipment size, and improved selectivity in natural gas processing. If successful, both the rate payer and the gas industry will benefit from this project since it will make more natural gas available by expanding the resource base from which natural gas can be economically recovered and will also reduce the cost for processing.

Issued in Washington, DC, September 2, 1992.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 92–21821 Filed 9–9–92; 8:45 am]

BILLING CODE 6450–01–M

Morgantown Energy Technology Center; Cooperative Agreement; Financial Assistance Award to Massachusetts Institute of Technology

AGENCY: Morgantown Energy Technology Center, Department of Energy (DOE).

ACTION: Notice of acceptance of a noncompetitive financial assistance application for an award of a grant.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i)(A) the DOE, Morgantown Energy Technology Center gives notice of its plans to award a three (3) year cooperative agreement to Massachusetts Institute of Technology (MIT), Office of Sponsored Programs, 77 Massachusetts Ave., room E19–702, Cambridge, MA 02139, with an associated budget of approximately $390,151.

FOR FURTHER INFORMATION CONTACT: Mary C. Spatafore, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26507–0880, Telephone: (304) 291–4253, Procurement Request No. 21–92MC29264.000.

SUPPLEMENTARY INFORMATION: The pending award is an extension of MIT's ongoing activities related to scaling the hydrodynamic and heat transfer behavior of a fluidized bed combustor sponsored by the DOE. The proposed program extends the hot-to-cold scaling concept to examine the performance of a pressurized bubbling bed and to develop simplifications of the scaling laws for this case.

The first part of the program involves comparison of the Tidd pressurized bubbling bed with a cold model simulating a section of the Tidd cross section. Following verification of the scaling laws for pressurized bubbling beds, the cold model will be used to provide critical design information for the commercial design of pressurized bubbling beds. The value of the research and the unique capabilities of the proposed team of MIT and Babcock & Wilcox fully supports the DOE's ultimate demonstration and commercialization goals for larger pressurized fluid bed combustion (FBC) projects. DOE support of this activity will enhance the public benefits and accelerate the accomplishment of the effort. Availing this clean and efficient coal utilization technology commercially is definitely in the public's best interest.

Issued in Washington, DC September 1, 1992.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 92–21823 Filed 9–9–92; 8:45 am]

BILLING CODE 6450–01–M

Morgantown Energy Technology Center; Financial Assistance Solicitation Available Notice (Cooperative Agreement)

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of availability of a financial assistance solicitation.

SUMMARY: The DOE, Morgantown Energy Technology Center, plans to issue a Program Research and Development Announcement (PRDA) No. DE–RA21–92MC29244 for research titled "Management of Dry Flue Gas Desulfurization By-Products in Underground Mines." This PRDA was advertised in the Commerce Business Daily on June 24, 1992. A minimum cost sharing of 25% of the total cost is required. Authority for the PRDA is the DOE Organization Act (Pub. L. 95–91 (42 U.S.C. 7101) and the DOE Financial Assistance Regulations, 10 CFR part 600, subparts A and C. DOE anticipates award of Cooperative Agreements with project durations ranging from 24 to 48 months.

FOR FURTHER INFORMATION CONTACT: Mark L. Estel, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26507–0880, Telephone: (304) 291–4085, PRDA No. DE–RA21–92MC29244.

SUPPLEMENTARY INFORMATION: The overall purpose of this solicitation is to determine whether disposal of coal use solid waste, especially from dry Flue Gas Desulfurization (FGD) processes, in underground mines is a viable management practice. The individual proposed projects must determine whether disposal of solid waste in underground mines is technically and economically viable. The work will address disposal of products to reduce or eliminate environmental problems sometimes associated with underground mining. It is anticipated that an initial laboratory phase will be followed by a pilot scale demonstration of the technology proposed.

Issued in Washington, DC September 2, 1992.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 92–21809 Filed 9–9–92; 8:45 am]

BILLING CODE 6450–01–M

Morgantown Energy Technology Center; Financial Assistance Award (Cooperative Agreement)

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of noncompetitive financial assistance application for a cooperative agreement.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.14(e)(2)(ii), the DOE Morgantown Energy Technology Center gives notice of its plans to award a five year Cooperative Agreement to West Virginia University's National Research Center for Coal and Energy, in Morgantown, West Virginia, in the approximate amount of $5,000,000.

FOR FURTHER INFORMATION CONTACT: Thomas L. Martin, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26507–0880, Telephone: (304) 291–4087, Cooperative Agreement No.: DE–FC21–92MC29467.

SUPPLEMENTARY INFORMATION: The DOE will fund the allowable costs of the Cooperative Agreement. The pending award is based on an unsolicited application for a research project entitled, "Decontamination Systems Information and Research Program" which was submitted by West Virginia University's National Research Center for Coal and Energy. The objective of the research project is the development of a leading environmental technology development program focussing on all aspects of waste site decontamination. The R&D effort will address technological barriers through basic and applied studies using laboratory, bench, and process development unit (PDU) scale equipment for existing and advanced environmental technology concepts.

Issued in Washington, DC on: September 2, 1992.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 92–21819 Filed 9–9–92; 8:45 am]

BILLING CODE 6450–01–M

Morgantown Energy Technology Center Financial Assistance Award (Grant Renewal)

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i)(B) and (G) the DOE, Morgantown Energy Technology Center, gives notice of its plans to award a renewal under Grant No. DE–FG21–91MC28253, to METC Kids, Inc., Morgantown, West Virginia, in the amount of $48,000, of which $24,000 will be funded in the upcoming budget period ($50,000 was provided on the original grant award).

FOR FURTHER INFORMATION CONTACT: D. Denise Riggi, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26507–0880, Telephone: (304) 291–4241, Procurement Request No. 21–92MC28253.503.

SUPPLEMENTARY INFORMATION: The purpose of the renewal award is to provide additional time and funding support to METC Kids for continued operation of the child care and development facility which provides child care and development services for METC. The child care and development center project is necessary to support the Department's mission. This relationship to mission was defined by the Secretary in the "Determination to Establish Child Care Centers in Department of Energy Facilities in Forrestal and Germantown," dated April 4, 1989. The DOE support of this program should assist the Department in furthering certain statutorily recognized social goals such as equal employment opportunities. METC Kids, Inc., a non-profit corporation established and controlled by DOE employees, was established in January, 1991, and is chartered specifically to provide child care and development services at the METC facility and is therefore uniquely positioned to operate and manage the facility. Based on the findings made above regarding the uniqueness of this corporate entity and the public interest served in the award of this renewal, the restriction of 10 CFR 600.7(c)(2) regarding eligibility of an organization substantially owned or controlled by one or more current DOE employees has been waived. The period of performance for the renewal is from October 16, 1992 through October 16, 1993.

Issued in Washington, DC, September 2, 1992.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 92–21820 Filed 9–9–92; 8:45 am]

BILLING CODE 6450–01–M

Morgantown Energy Technology Center; Cooperative Agreement; Financial Assistance Award to West Virginia University Research Corporation

AGENCY: Morgantown Energy Technology Center, Department of Energy (DOE).

ACTION: Notice of acceptance of a noncompetitive financial assistance project revision application under a current cooperative agreement.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i)(A) the DOE, Morgantown Energy Technology Center gives notice of its plans to award a project revision to the West Virginia University Research Corporation, West Virginia University, Appalachian Oil and Natural Gas Research Consortium (AONGRC), 213 Glenlock Hall, Morgantown, WV 26506 for additional effort under Cooperative Agreement DE–FC21–91MC28176. The additional effort will take three years to complete and will be performed concurrently with the current effort; overall it will require a one-year project extension. The additional effort has an associated budget of approximately $1,300,322; the budget includes a 10% participant cost share ($134,914).

FOR FURTHER INFORMATION CONTACT: Mary C. Spatafore, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26507–0880, Telephone: (304) 291–4253, Procurement Request No. 21–91MC28079.000.

SUPPLEMENTARY INFORMATION: The objective of this action is to add a task to the current cooperative agreement with West Virginia Research Corporation to collect oil reservoir information; this information will be collected along with the gas production data currently being compiled under the project for the Appalachian region. The objectives of the additional task to collect oil reservoir information are: (1) To increase the coverage of oil reservoirs in the Appalachian Basin in the Tertiary Oil Recovery Information System (TORIS) Database; and (2) to evaluate data for reservoirs currently in TORIS, and change, delete, or add to the data as is necessary. The effort is considered a natural extension of the effort currently being conducted by the participant. Oil and gas reserves coexist side by side naturally in a reservoir. The oil and gas reserve data can therefore be collected at the same time. In addition, the same entities (the state surveys [WV, OH, PA and KY] and WVU) performing the current project are uniquely qualified to perform the additional effort; they possess the requisite data and expertise for satisfactory completion of the DOE objectives in the Appalachian Region. The benefits of this oil and natural gas data collection activity are that it will pull together the systematic compilation of reserve and production data and their placement in a reservoir play-defined framework which reveals the most prolific combinations of structures and producing facies. DOE support of this activity will enhance the public benefits and accelerate the accomplishment of the effort; furthermore, the DOE knows of no other entity which is planning to conduct the specifically proposed project. Overall, the public will benefit by this data collection as DOE support will allow for greater dissemination of the project results to industry in a timely fashion. Addition of this task to the current agreement is of real benefit from an economic and technical standpoint, as issuance of a separate agreement would be more costly, time consuming, and a duplication of effort.

Issued in Washington, DC on: September 1, 1992.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 92–21822 Filed 9–9–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER92–90–000, et al.]

New England Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 1, 1992.

Take notice that the following filings have been made with the Commission:

1. New England Power Co.

[Docket No. ER92–90–000]

Take notice that on August 24, 1992, New England Power Company (NEP) tendered for filing an amendment to its submittal of October 7, 1991, relative to thirty Unit Power Contracts pursuant to

the Commission's directive in Central Maine Power Company, Docket No. ER91-457-000.

NEP states that this amendment provided additional data for review.

Comment date: September 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Northern Electric Power Co., L.P.

[Docket Nos. ER92-668-000, ES92-46-000, EC92-20-000]

Take notice that on August 21, 1992, Northern Electric Power Co., L.P. tendered for filing a supplement to the initial rate filing filed in the above-referenced dockets on June 26, 1992.

Comment date: September 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Entergy Services, Inc. and Gulf States Utilities Co.

[Docket No. EC92-21-000]

Take notice that on August 28, 1992, Entergy Services, Inc. ("Entergy"), as agent for Entergy Corporation ("Entergy"), and Gulf States Utilities Company ("Gulf States") (collectively, "Applicants"), pursuant to section 203 of the Federal Power Act ("FPA"), 16 U.S.C. 824b (1988), tendered for filing a Joint Application for an order authorizing and approving a proposed merger and reorganization to combine their systems ("Joint Application").

Gulf States is engaged principally in the business of generating electric energy and transmitting, distributing, and retailing such energy in a 28,000 square mile area to more than 580,000 retail customers in southeastern Texas and in south Louisiana. Gulf States owns a 70 percent share of River Bend, a nuclear-fueled electric generating station, and operates the station near St. Francisville, Louisiana. In addition to the electric business, Gulf States produces and sells steam for industrial use and purchases and sells natural gas at retail in the Baton Rouge, Louisiana area. The gas and steam products businesses are conducted entirely in Louisiana. Gulf States wholly owns three subsidiaries: GSG&T, Inc., which owns a 520 MW generating facility; Varibus Corporation, which operates certain intrastates gas pipelines in Louisiana used primarily to transport fuel to two of Gulf States' generating stations and, through a division known as Vari Tech, markets computer-aided engineering and drafting technologies and related computer equipment and services; and Prudential Oil & Gas, Inc., an energy exploration and development company which is presently inactive.

Entergy Services is the service company for Entergy, a registered public utility holding company, organized under the laws of the State of Florida, with its principal place of business in New Orleans, Louisiana. Entergy owns all of the outstanding shares of common stock of four operating electric utility subsidiaries: Arkansas Power & Light Company ("AG&L"), Louisiana Power & Light Company ("LP&L"), Mississippi Power & Light Company ("MP&L"), and New Orleans Public Service Inc. ("NOPSI") (collectively, the "Operating Company"). The Operating Companies are engaged in the manufacture, generation, transmission, distribution, and sale of electric energy in portions of Arkansas, Louisiana, Mississippi and Tennessee. The Operating Companies provide service to more than 1.7 million retail customers in a 45,000 square mile distribution area. In addition, NOPSI provides natural gas service to approximately 160,000 retail customers in New Orleans, Louisiana.

Entergy wholly owns the outstanding common stock of five additional companies: Entery Services, Inc., Entergy Operations, Inc. ("EOI"), Entergy Power, Inc., System Energy Resources, Inc. ("SERI"), and Electec, Inc. Entergy Services is the service company for the Entergy System. EOI operates four nuclear-fueled electric generating stations: Arkansas Nuclear One, Units 1 and 2, located near Russellville, Arkansas; Grand Gulf Nuclear Station Unit 1 ("Grand Gulf 1"), located near Port Gibson, Mississippi; and Waterford Steam Electric Station, Unit 3, located near Taft, Louisiana. Entergy Power, Inc. is an affiliated power producer with 809 MW of generating capacity. SERI is a nuclear generating company that owns and leases a ninety percent undivided interest in Grand Gulf 1 and sells to the Operating Companies the capacity and energy to which it is entitled. Electec, Inc. is a non-utility subsidiary investing in projects beneficial to the Entergy System.

Applicants state that they have executed an Agreement and Plan of Reorganization to combine the systems of Entergy and Gulf States. Applicants state that pursuant to this Agreement and Plan of Reorganization, described more fully in the Joint Application, Entergy will ultimately merge into a new holding company (a Delaware corporation to be named Entergy Corporation), of which AP&L, Gulf States, LP&L, MP&L, and NOPSI will be operating company subsidiaries. Applicants state that there is an alternative reorganization in which Entergy and Gulf States will remain subsidiaries of the new holding company if the Internal Revenue Service does not issue certain rulings. Applicants further state that substantial efficiencies will result from the integration of the currently separate operations of Gulf States and the Operating Companies. Applicants also state that testimony in support of the Joint Application was filed with the Joint Application. The Applicants submit that the proposed merger will be consistent with the public interest.

Copies of the Joint Application have been served upon the state commissions of Arkansas, Louisiana, Mississippi, Tennessee, and Texas, and upon the Council of the City of New Orleans.

Applicants state that, concurrent with the filing of the Joint Application pursuant to Section 203 of the FPA, they are filing a related application under Section 205 of the FPA for Commission approval of an amendment to add Gulf States to the System Agreement among the Entergy Operating Company subsidiaries and Entergy Services, as well as a Motion for Consolidation, Expedited Action, and Limited Hearing Procedures.

Applicants state that an application will be filed with the Nuclear Regulatory Commission seeking approval to amend its license to add EOI as operator of River Bend, subject to such consents as may be required by law and by contract. An application for approval of the merger and reorganization and related transactions has been or will be filed with the Securities and Exchange Commission under the Public Utility Holding Company Act. Applicants further state that on July 1, 1992, separate applications for approval of the merger and reorganization were filed with the Louisiana Public Service Commission and the Public Utility Commission of Texas.

Comment date: September 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Northern States Power Co. (Minnesota) and Northern States Power Co. (Wisconsin)

[Docket No. ER92-302-000]

Take notice that on August 24, 1992, Northern State Power Company (Minnesota) and Northern States Power Company (Wisconsin) (hereinafter jointly "NSP Companies") tendered for filing an amendment supporting the terms and conditions of the Eastern Interconnection and Interchange Agreement (Agreement) between the NSP Companies and the Wisconsin Public Power, Inc. SYSTEM (WPPI). This filing constitutes a third amendment to NSP's original filing dated January 31,

1992, as previously amended by filings dated March 31, 1992, and April 15, 1992.

The Agreement between NSP and WPPI provides for certain sales of Peaking Power between NSP and WPPI pursuant to Service Schedules B attached to the Agreement, including the terms and conditions of such services. The proposed filing amendment supports the 20 percent capacity factor limitation contained in Service Schedule B. The amendment does not propose to change the rates or terms and conditions of service for Peaking Power under the Agreement.

NSP requests that the Agreement (as amended) be accepted for filing effective November 1, 1991, and request waiver of the Commission's notice requirements in order for the Agreement to be accepted for filing on the date requested.

Comment date: September 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Entergy Services, Inc. and Gulf States Utilities Co.

[Docket No. ER92-806-000]

Take notice that on August 28, 1992, Entergy Services, Inc. ("Entergy Services") on behalf of Arkansas Power & Light Company ("AP&L"), Louisiana Power & Light Company ("LP&L"), Mississippi Power & Light Company ("MP&L"), and New Orleans Public Service Inc. ("NOPSI") (collectively, the "Operating Companies"), and Gulf States Utilities Company ("Gulf States"), jointly tendered for filing a rate schedule change, pursuant to section 205 of the Federal Power Act ("FPA"), 16 U.S.C. 824d (1988). The rate schedule filing consists of the following:

(1) Agreement among Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, New Orleans Public Service Inc. and Middle South Services, Inc. dated April 23, 1982 ("System Agreement"); and

(2) Agreement among Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, New Orleans Public Service Inc., and Entergy Services, Inc. to amend the system agreement ("Agreement to Amend").

Applicants state that the Agreement to Amend extends the System Agreement to Gulf States, which will become a "sister" company of the Operating Companies upon authorization and consummation of a proposed combination which is the subject of an Application under section 203 of the FPA.

The Agreement to Amend modifies the System Agreement and is filed as a supplement to the Operating Companies' rate schedules, which are designated as:

AP&L Rate Schedule FERC No. 94;
LP&L Rate Schedule FERC No. 69;
MP&L Rate Schedule FERC No. 282; and
NOPSI Rate Schedule FERC No. 8.

With respect to Gulf States, the Agreement to Amend and the System Agreement are together filed as a rate schedule, whose number will be designated by the Commission.

The Applicants state that an Agreement and Plan of Reorganization Between Entergy Corporation and Gulf States Utilities Company dated as of June 5, 1992 proposes to combine the Entergy and Gulf States systems. The combination will integrate Gulf States into the Entergy System by reorganizing Gulf States as an operating company subsidiary of a new holding company, also to be called Entergy Corporation. The Applicants state that the Agreement to Amend, which will subject Gulf States to the System Agreement in the same manner as AP&L, LP&L, MP&L and NOPSI, is necessary to achieve the full benefits of the proposed combination.

The Applicants state that the System Agreement provides for centralized planning, construction and operation of the electric generation and transmission facilities among the Operating Companies. Applicants state that, among other things, the System Agreement provides a method to equalize among the Operating Companies certain imbalances in costs associated with construction, ownership and operation of facilities. The System Agreement was initially approved by the Commission in Opinion No. 234, Middle South Energy, Inc., 31 FERC (CCH) ¶ 61,305 (1985).

Applicants state that the Agreement to Amend is a rate schedule change other than a rate increase. Applicants state that the rate schedule change only proposes to alter the System Agreement by adding Gulf States as an operating company under the System Agreement, including the modification of a service schedule formula to include Gulf States. Therefore, Applicants state that the rate schedule change will have an effect on rates that is neither a rate increase nor a rate decrease. Applicants further state that testimony describing this Amendment and its effect on Gulf States and the Operating Companies has been filed concurrently with this application.

Copies of the Joint Application have been served upon the state commissions of Arkansas, Louisiana, Mississippi, Tennessee and Texas, and the Council of the City of New Orleans.

Applicants state that, concurrent with the filing of the Application pursuant to section 205 of the FPA, they are filing a related application under section 203 of the FPA seeking a Commission order authorizing and approving the proposed merger and reorganization to combine their systems, as well as a motion for consolidation, expedited action and limited hearing procedures.

Comment date: September 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Tampa Electric Co.

[Docket No. ER92-782-000]

Take notice that on August 24, 1992, Tampa Electric Company (Tampa Electric) tendered for filing a Service Schedule J (Negotiated Interchange Service) between Tampa Electric and the City of St. Cloud Electric Utilities (St. Cloud). The Service Schedule J was tendered as a supplement to the existing agreement for interchange service between Tampa Electric and St. Cloud.

Tampa Electric also tendered for filing, as a supplement to the Service Schedule J, a Letter of Commitment providing for negotiated sales of available power by Tampa Electric to St. Cloud.

Tampa Electric proposes an effective date of the earlier of October 24, 1992, or the date that the submittals are accepted for filing, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on St. Cloud and the Florida Public Service Commission.

Comment date: September 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Co. of Colorado

[Docket No. ER92-317-000]

Take notice that on August 21, 1992, Public Service Company of Colorado (Public Service) filed with the Commission an executed copy of the Power and Transmission Services Agreement among Public Service, Tri-State Generation and Transmission Association, Inc., and PacfiCorp (PTSA). Publice Service had previously committed to submit an executed copy of the PTSA when it filed, among other things, an unexecuted copy thereof on February 7, 1992.

Public Service states that copies of the filing have been served on the parties in this docket.

Comment date: September 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Central Vermont Public Service Corp.

[Docket No. ER92-594-000]

Take notice that on August 14, 1992, Central Vermont Public Service Corporation tendered for filing an

amendment in the above-referenced docket.

Comment date: September 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Northern States Power Co. (Minnesota)

[Docket No. ER92-551-000]

Take notice that on August 24, 1992, Northern States Power Company (NSP) tendered for filing a revised proposed rate for inclusion in the Transmission Exchange Agreement (Agreement) dated May 12, 1992, between NSP and Heartland Consumers Power District (Heartland). The revised rate schedule constitutes an amendment to NSP's original filing dated May 15, 1992.

The Agreement between NSP and Heartland provides certain transmission outlet service on essentially an exchange basis from Heartland's peaking generation located in Marshall, Minnesota, inside NSP's electrical control area, to NSP's interconnections with United Power Association. The proposed amendment (i) provides further cost justification for the Energy Accounting and Dispatch Service rate, (ii) revises the methodology by which NSP will collect capacity and energy losses from Heartland, and (iii) eliminates the $1 per MWH adder for difficult to quantify costs pursuant to Commonwealth Edison, 35 FERC para. 61,352 (1986).

NSP again requests that the Agreement (as amended) be accepted for filing effective May 16, 1992, and requests waiver of the Commission's notice requirements in order for the Agreement to be accepted for filing on the date requested.

Comment date: September 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Onondaga Cogeneration Limited Partnership

[Docket No. QF87-429-002]

On August 18, 1992, Onondaga Cogeneration Limited Partnership (Applicant), c/o Energy Initiatives, Inc., One Upper Pond Road, Parsippany, New Jersey 07054, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(B) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Geddes, New York. The facility will consist of two combustion turbine generators, two waste heat recovery boilers and an extraction/condensing steam turbine generator. Steam produced by the facility will be provided to Crucible Materials Corporation and other purchasers for industrial processes. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 79.9 MW.

The certification of the facility was originally issued on September 10, 1987 [40 FERC ¶ 62,311 (1987)]. A notice of selfcertification was filed on November 28, 1989 in Docket No. QF90-37-000. The instant recertification is requested by the Applicant due to the change of the steam host and the ownership structure of the facility, and the addition of a 6,000 feet transmission line.

Comment date: October 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure [18 CFR 385.211 and 385.214]. All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21688 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-671-000, et al.]

Tennessee Gas Pipeline Company, et al.; Natural Gas Certificate Filings

September 1, 1992.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Co.

[Docket No. CP92-671-000]

Take notice that on August 25, 1992, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252 filed in Docket No. CP92-671-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add an additional delivery point under an existing firm sales service to Berkshire Gas Company, under the blanket certificate issued Docket No. CP82-413-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that it currently provides natural gas service to Berkshire under the terms and conditions of Tennessee's CD-6 Rate Schedule and the terms and conditions of a gas sales contract between Tennessee and Berkshire dated July 1, 1992, as filed with the commission in Docket No. RP88-228, *et al.*, on August 24, 1992. Pursuant to a request of Berkshire, Tennessee proposes to add the Bousquet delivery point located in Pittsfield, Massachusetts, as a delivery point under the contract. No new facilities are proposed.

Tennessee also states it does not propose to increase or decrease the total daily and/or annual quantities it is authorized to deliver to Berkshire. Tennessee further states that the establishment of the proposed new delivery point is not prohibited by Tennessee's currently effective tariff and that it has sufficient capacity to accomplish the deliveries at the proposed new delivery point without detriment or disadvantage to any of Tennessee's other customers.

Comment date: October 16, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. Williams Natural Gas Co.

[Docket No. CP92-679-000]

Take notice that on August 28, 1992, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92-679-000, a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon the transportation of natural gas for direct sale to Kizzar Well Service, Inc. (Kizzar) and to reclaim measuring, regulating and appurtenant facilities located in Rice County, Kansas, under the authorization issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG states that it has made the direct sale to Kizzar for use at the Sharpe lease operation located in section 8, T20S, R9W, Rice County, Kansas. It is stated that Kizzar has notified WNG that gas service is no longer required for the lease operation.

WNG states that the cost to reclaim the measuring, regulating and appurtenant facilities is estimated to be approximately $680.

Comment date: October 16, 1992, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Gas Transmission Corp.

[Docket No. CP92-676-000]

Take notice that on August 27, 1992, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP92-676-000, a request pursuant to § 157.205 of the Commission's Regulations under the National Gas Act (18 CFR 157.205) for authorization to abandon by removal 19 sales taps currently serving 23 customers of Southern Indiana Gas and Electric Company (SIGECO) in Gibson County, Indiana, under its blanket certificate issued in Docket No. CP82-407-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas states that by letter dated August 4, 1992, SIGECO requested Texas Gas to abandon 19 sales taps currently serving 23 customers of SIGECO. SIGECO explains that it is extending its distribution mains and plans to serve these customers from its own distribution line rather than from Texas Gas' Slaughters-Montezuma 12-inch transmission line.

SIGECO will continue to serve these 23 customers directly off its distribution lines behind its Haubstadt Delivery Point with Texas Gas when these sales taps are abandoned, it is stated. Texas Gas asserts that service to these customers will not be affected by the abandonment of these facilities.

Comment date: October 16, 1992, in accordance with Standard Paragraph G at the end of this notice.

4. Tennessee Gas Pipeline Co.

[Docket No. CP91-1618-003]

Take notice that on August 26, 1992, Tennessee Gas Pipeline Company (Tennessee), 1010 Milam, Houston, Texas 77252, filed in Docket No. CP91-1618-003 a petition to amend an order issued on December 27, 1991, in Docket No. CP91-1618-000 pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon in-place approximately 280 feet of pipeline on the Westfield Delivery segment of the Massachusetts Lateral Replacement, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Tennessee states that the Commission's order issued on December 27, 1991, in Docket No. CP91-1618-000 authorized, among other things, to replace approximately 1.10 miles of 3.5-inch pipeline on its Westfield Delivery Line in Hampden County, Massachusetts with 8-inch pipeline. Tennessee proposes to abandon in place approximately 280 feet of this 3.5-inch pipeline instead of removing it as originally planned due to the difficulty in complying with certain environmental requirements and safety concerns

Comment date: September 22, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157. 205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21689 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-1-000]

Alabama-Tennessee Natural Gas Company; Proposed PGA Rate Adjustment

September 3, 1992.

Take notice that on August 31, 1992, Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee"), Post Office Box 918, Florence, Alabama 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet.

34th Revised Sheet No. 4.

The tariff sheet is proposed to become effective October 1, 1992. Alabama-Tennessee states that the purpose of this filing is to adjust its rates to conform to the rates of its suppliers and to reflect certain transportation costs as purchased gas costs as permitted under the Commission's order issued on February 7, 1992 in Docket No. RP92-89-000 (58 FERC ¶ 61,130). Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheet to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional sales and transportation customers and affected state regulatory commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in

determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21758 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 3, 1992.

Take notice that Algonquin Gas Transmission Company ("Algonquin"), on September 1, 1992, tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, tariff sheets listed in Attachment A attached to the filing and proposed to be effective October 1, 1992.

Algonquin states that pursuant to section 32 of the General Terms and Conditions of Algonquin's FERC Gas Tariff, Algonquin is filing the tariff sheets listed in Attachment A to track the increase in the Commission's Annual Charge Adjustment Surcharge for the Fiscal Year 1992.

Algonquin states that the net effect of the instant filing is to increase the commodity charge by 0.01¢ per MMBtu for Rate Schedules F-1, F-2, F-3, F-4, WS-1, I-1, E-1, I-2, T-1, T-LG, T-X, AFT-1, AFT-3, AFT-4, AIT-1, PSS-T, FTP, X-33, X-35 and X-37 and to increase the third party injection rate in Rate Schedules STB and SS-III by the same amount.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21766 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-31-000]

Arkla Energy Resources; Filing of Revised Tariff Sheets Reflecting Quarterly PGA Adjustment

September 3, 1992.

Take notice that on September 1, 1992, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following revised tariff sheets to become effective October 1, 1992:

Rate Schedule No. X-26, Original Volume No. 3, Twentieth Revised Sheet No. 185.1

Rate Schedule No. G-2, Second Revised Volume No. 1, Fifteenth Revised Sheet No. 11

Rate Schedule No. CD, Second Revised Volume No. 1, Fifteenth Revised Sheet No. 16

AER states that the tariff sheets reflect AER's second quarterly PGA filing made subsequent to its annual PGA effective April 1, 1992 under the Commission's Order Nos. 483 and 483-A.

AER also states that the proposed changes reflect an increase in AER's system cost of $41,981 and would increase its revenue from jurisdictional sales and service by $911 for the PGA period of October, November and December 1991 as adjusted.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92- 21757 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-88-000]

Black Marlin Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 3, 1992.

Take notice that on August 31, 1992, Black Marlin Pipeline Company (Black Marlin) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to be effective October 1, 1992.

Second Revised Sheet No. 4

Black Marlin states that the above-referenced tariff sheet is being filed pursuant to Section 18 of the General Terms and Conditions of Black Marlin's tariff to reflect the continuation of the ACA charge of .22¢/MMBtu based on the Commission's Annual Charge Billing for Fiscal Year 1992.

Black Marlin further states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21778 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 3, 1992.

Take notice that Columbia Gas Transmission Corporation (Columbia) on August 31, 1992, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective October 1, 1992:

Fifteenth Revised Sheet No. 26.1
Fifteenth Revised Sheet No. 26A.1
Twenty-first Revised Sheet No. 26C

Twelfth Revised Sheet No. 26D

Columbia states that the listed tariff sheets set forth the adjustment to its sales and transportation rates applicable to the Annual Charge Adjustment, pursuant to the Commission's Regulations as set forth in Order No. 472, *et seq.*

Columbia states that copies of the filing were served upon Columbia's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21767 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-70-000]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

September 3, 1992.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf) on August 31, 1992, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective October 1, 1992:

Seventh Revised Sheet No. 021
Fourth Revised Sheet No. 022
Third revised Sheet No. 046

Columbia Gulf states that the listed tariff sheets set forth the adjustment to its sales and transportation rates applicable to the Annual Charge Adjustment, pursuant to the Commission's regulations as set forth in Order No. 472, *et seq.*

Columbia Gulf states that copies of the filing were served upon Columbia Gulf's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21771 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-2-000]

East Tennessee Natural Gas Co.; Rate Filing

September 3, 1992.

Take notice that on August 31, 1992, East Tennessee Natural Gas Company ("East Tennessee"), submitted for filing ten copies each of Twenty Seventh Revised Nos. 4 and 5 to First Revised Volume No. 1 of its FERC Gas Tariff to be effective October 1, 1992.

East Tennessee states that the purpose of the filing is to implement a Quarterly Gas Rate Adjustment to be effective for the period October 1 through December 31, 1992, pursuant to section 21.1(b) of the General Terms and Conditions of East Tennessee's FERC Gas Tariff.

East Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest such filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20425, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining appropriate action but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21760 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA93-1-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 3, 1992.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on August 31, 1992 certain revised tariff sheets to First Revised Volume No. 1 of its FERC gas tariff. The proposed effective date of the tariff sheets is November 1, 1992.

ESNG states the filing is its Annual PGA filing pursuant to § 154.305 of the Commission's regulations and section 21 of its FERC Gas Tariff, First Revised Volume No. 1. The effect of the filing is to increase commodity rates by $0.2967 per dt and make no change in the demand rates over ESNG's rates established in its Out-of-Cycle PGA filing, Docket No. TQ92-7-23-000, proposed to be effective September 1, 1992 and reiterated in its Restatement of Base Tariff Rates filing, Docket No. RP92-227-000, proposed to be effective October 1, 1992. Other rates also change correspondingly.

ESNG states that the projected commodity and demand costs have been developed using a best estimate of available gas supply to meet its anticipated purchase requirements. Such projections reflect the continued implementation of ESNG's Stipulation and Agreement in Docket Nos. RP89-164-000 and 001, and more specifically Article II (as amended) thereof, which permits ESNG to include in its PGA calculations transportation-related (Account No. 858) costs.

ESNG states its filing also contains the calculations of its new surcharge adjustments which reflect the amortization of the respective commodity and demand current deferral balances accumulated during the period July 1, 1991 through June 30, 1992 over the twelve month period commencing November 1, 1992.

ESNG states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC

20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 21, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21777 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-33-000]

El Paso Natural Gas Company; Tariff Filing

September 3, 1992.

Take notice that on August 31, 1992, El Paso Natural Gas Company ("El Paso"), tendered for filing, pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, a notice of:

(i) A revision to El Paso's Take-or-Pay Buyout and Buydown Cost Recovery mechanism for interest in accordance with Sections 22 and 21, Take-or-Pay Buyout and Buydown Cost Recovery, of its First Revised Volume No. 1-A and Second Revised Volume No. 1 FERC Gas Tariffs, respectively; and

(ii) A revision in the Annual Charge Adjustment ("ACA") in accordance with Sections 21 and 23, Annual Charge Adjustment Provision, contained in the General Terms and Conditions in El Paso's First Revised Volume No. 1-A and Second Revised Volume No. 1 FERC Gas Tariffs, respectively.

El Paso states that in reference to item (i) the filing reflects that no additions have been made to the principal amount presently being amortized under El Paso's Take-or-Pay Cost Recovery mechanism as set forth in El Paso's filing made July 1, 1992 at Docket No. RP92-195-000. The only adjustments proposed are being made pursuant to §§ 21.4(d)(iii) and 21.5(c)(iii) contained in its Second Revised Volume No. 1 Tariff which provides for adjustments to El Paso's Monthly Direct Charge and Throughput Surcharge for interest calculated on the unrecovered balance of El Paso's buyout and buydown costs. El Paso states that interest is permitted to accrue, with respect to its buyout and buydown costs, commencing on the effective date of the rates including such costs or the date El Paso makes the take-or-pay payment, whichever is later. As a result, the Throughput Surcharge has been changed from a Maximum Rate of $0.0393 per dth to $0.0349 per dth.

In addition, in reference to item (ii) El Paso states that the proposed tariff sheets reflect an ACA charge of $0.0022 per dth to be collected for the fiscal year beginning October 1, 1992. This represents a decrease of $0.0001 per dth in the ACA charge currently being charged.

El Paso respectfully requested that the tendered tariff sheets be accepted and permitted to become effective on October 1, 1992, which is not less than thirty (30) days after the date of filing.

El Paso states that copies of the filing were served upon all interstate pipeline system transportation and sales customers of El Paso and interested regulatory commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21761 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-34-000]

Florida Gas Transmission Company; Proposed Changes in FERC Gas Tariff

September 3, 1992.

Take notice that on August 31, 1992, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets to be effective October 1, 1992:

Thirty-First Revised Sheet No. 8
Tenth Revised Sheet No. 8A
Eighth Revised Sheet No. 8B

FGT states that the above-referenced tariff sheets are being filed pursuant to Section 22 of the General Terms and Conditions of FGT's tariff to reflect the continuation of the ACA charge of .23¢/MMBtu (.023¢/therm) based on the Commission's Annual Charge Billing for Fiscal Year 1992.

FGT further states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21774 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-6-34-000]

Florida Gas Transmission Company; Proposed Changes in FERC Gas Tariff

September 3, 1992.

Take notice that on August 31, 1992 Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to be effective September 1, 1992:

Thirtieth Revised Sheet No. 8

FGT states that the above-referenced tariff sheet is being filed to reflect an increase in FGT's cost of gas purchased from that level reflected in its last Quarterly PGA filing effective August 1, 1992 in Docket No. TQ92-5-34-000.

On June 30, 1992, FGT made a filing in its Quarterly PGA in Docket No. TQ92-5-34-000 containing a projected cost of purchased gas for the period August 1, 1992 through October 31, 1992 of $2.1453/MMBtu saturated. Subsequent to the Quarterly filing, FGT has experienced an increase in its cost of purchased gas to a level that now exceeds the level of purchased gas cost established in FGT's last Quarterly PGA. However, FGT is precluded from adjusting its rates under Section 15.10 (Interim Adjustment Filings) of its FERC Gas Tariff to reflect a level of gas cost that exceeds the level established in its

last Quarterly PGA filing. Therefore, FGT is making the instant Out-of-Cycle PGA filing in order to reflect the increases in its cost of purchased gas to a level of $2.5088/MMBtu saturated.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21775 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-66-000]

Mojave Pipeline Company; Conference

September 3, 1992.

Take notice that on Wednesday, September 23, 1992, at 10 a.m., a conference will be convened in the above-captioned docket to discuss Mojave Pipeline Company's summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. All interested parties are invited to attend. Attendance at the conference will not confer party status. For additional information, interested persons can call Marilyn Rand at (202) 208-0327 or James Moody (202) 208-2050.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21763 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-16-000 and TQ93-1-16-000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

September 3, 1992.

Take notice that on August 31, 1992, National Fuel Gas Supply Corporation ("National") tendered for filing the following revised tariff sheets as part of its FERC Gas Tariff, Second Revised Volume No. 1, to become effective on October 1, 1992:

(A) Twenty-Third Revised Sheet No. 5
(B) Alt Twenty-Third Revised Sheet No. 5
(C) Sixth Revised Sheet No. 6

The purpose of this filing is to revise the ACA surcharge, implement a quarterly Purchased Gas Cost Adjustment ("PGA") and Transportation and Compression Cost Adjustment ("TCCA") rate change.

To cover the possible outcome of the compliance filing National made on August 28, 1992 regarding the recovery of the undercollected Account No. 858 costs through a 12-month surcharge, National submits primary tariff sheet (A) and alternate tariff sheet (B). However, both sheets (A) and (B) reflect identical gas cost projections in the quarter of October 1992. The revised RQ and CD sales commodity rate of 240.13 cents per Dt on the primary tariff sheet and 240.88 cents per Dt on the alternate tariff sheet are based upon a current average cost of purchased gas of 199.78 cents per Dt (in unit of purchases), or 204.84 cents per Dt (in unit of sales).

National submits tariff sheets (A), (B) and (C) with a revised ACA surcharge of 0.22 cents per Dt to become effective on October 1, 1992.

To reflect the latest projection of Account No. 858 costs, National revises the Current TCCA Unit Rate in demand and commodity to $4.00 per Dt and 25.81 cents per Dt respectively to become effective on October 1, 1992.

National further states that copies of this filing were served upon the Company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Docket No. TM93-1-16-000, TQ93-1-16-000, Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21779 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

Federal Enegy Regulatory Commission

Sabine Pipe Line Co. Proposed Changes in FERC GAS Tariff

September 3, 1992.

Take notice that Sabine Pipe Line Company (Sabine) on September 1, 1992, tendered for filing the following proposed change to its FERC Gas Tariff, First Revised Volume No. 1, to be effective October 1, 1992:

Tenth Revised Sheet No. 20

Sabine states that the Commission has specified the Annual Charge Adjustment (ACA) unit charge of $.0023/Mcf to be applied to rates in 1993 for recovery of 1992 annual charges. The ACA unit rate of $.0023/Mcf converts to $.0022 MMBtu under Sabine's basis for billing.

Sabine states that copies of the filing were served upon Sabine's customers, the State of Louisiana, Department of Natural Resources, Office of Conservation and the Railroad Commission of Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the pubic reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21768 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-79-000]

Sea Robin Pipeline Company; Conference

September 3, 1992.

Take notice that on Wednesday, October 14, 1992, at 10 a.m., a conference will be convened in the above-captioned docket to discuss Sea Robin Pipeline Company's summary of its proposed plan for implementation of Order No. 636.

The conference will be held in Hearing Room 1, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. All interested parties are invited to attend. Attendance at the conference will not confer party status. For additional information, interested persons can call Al Francese at (202) 208-0730 or Robert J. Szekely at (202) 208-0442.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21765 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ93-1-7-000 and TM93-1-7-000]

Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

September 3, 1992.

Take notice that on August 31, 1992, Southern Natural Gas Company (Southern) tendered for filing the following revised sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1:

One Hundred Twenty-Third Revised Sheet No. 4A
Thirty-Sixth Revised Sheet No. 4B
Forty-Second Revised Sheet No. 4J
Eighth Revised Sheet No. 45M

Southern states that the proposed tariff sheets and supporting information are being filed with proposed effective date of October 1, 1992.

Southern states that the aforesaid tariff sheets reflect an increase of 41.5¢ per Mcf at 1,000 Btu in the commodity component of Southern's rates for its last scheduled PGA filing in Docket No. TQ92-3-7-000 as a result of projected changes in Southern's cost of purchased gas. Additionally, the aforesaid tariff sheets implement the Commission's revised annual charge adjustment of .23¢ per MMBtu.

Southern states that copies of the filing were served upon all of Southern's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21769 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-69-000]

Stingray Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 3, 1992.

Take notice that on September 1, 1992, Stingray Pipeline Company (Stingray) tendered for filing revised tariff sheets to be a part of its FERC Gas Tariff, First Revised Volume No. 1, to be effective October 1, 1992.

Stingray states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Stingray to recover from its customers annual charges assessed it by the Commission pursuant to Part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1992 is .23¢ per Mcf. Under Stingray's billing basis, this rate converts to .22¢ per Dekatherm.

Stingray also states it is refiling its ACA tariff provision which was inadvertently omitted when Stingray filed its tariff in electronic media format as part of its general rate case filed August 30, 1991 at Docket No. RP91-212-000.

Stingray requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective on October 1, 1992.

Stingray states that a copy of the filing is being mailed to Stingray's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21772 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-629-021, CP90-639-012]

Tennessee Gas Pipeline Co., System, L.P.; Notice of Compliance Filing, September 3, 1992.

Take notice that on July 15, 1992, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed supplemental information in compliance with the Commission's order, issued June 29, 1992 (59 FERC ¶61,386), in Docket Nos. RP92-181-000, CP89-629-021, and CP90-639-012, which required Tennessee to file all the information and data normally required to be submitted with an application for a certificate amendment including but not limited to revised Exhibits F, G, K, and N, all as more fully set forth in the compliance filing which is on file with the Commission and open to public inspection.

Tennessee states that it has revised its proposal such that Exhibits N and P reflect the cost factors established in the October 9, 1991 Phase II Order (57 FERC ¶61,047). Tennessee states that the proposed firm transportation rates thus reflect the updated costs for the facilities necessary to provide the 1992 certified services, as well as one-part, 100-percent demand rates for all such services except Selkirk Cogen Partners, L.P.

Tennessee states further that if the Commission grants the requested amendment, Tennessee will incorporate the revised initial rates in the compliance tariff filing that Tennessee submits in accordance with the Phase II Order and the Commission's Regulations. Tennessee requests waiver of the 30-day prior notice requirement of part 154 of the Commission's Regulations if the Commission fails to act on this application in time to allow

Tennessee to submit its compliance tariff filing at least 30 days before November 1, 1992, when Phase II service is scheduled to commence.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before September 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21687 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-68-000]

Trailblazer Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 3, 1992.

Take notice that on September 1, 1992, Trailblazer Pipeline Company (Trailblazer) tendered for filing Thirteenth Revised Sheet No. 4 (Original Volume No. 1) and Second Revised Sheet No. 5 (First Revised Volume No. 1A) to be a part of its FERC Gas Tariff, to be effective October 1, 1992.

Trailblazer states that the purpose of filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Trailblazer to recover from its customers annual charges assessed it by the Commission pursuant to part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1992 is .23¢ per Mcf.

Trailblazer requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective on October 1, 1992.

Trailblazer states that a copy of the filing is being mailed to Trailblazer's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21773 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-29-000]

Transcontinental Gas Pipe Line Corporation

September 3, 1992.

Take notice that Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing on September 1, 1992 Fourth Revised Sheet No. 60 to its FERC Gas Tariff, Third Revised Volume No. 1. Such tariff sheet is proposed to be effective October 1, 1992.

TGPL states that the purpose of this filing is to reflect a decrease in the Annual Charge Adjustment (ACA) Charge in the commodity portion of TGPL's sales and transportation rates. Pursuant to Order No. 472, the Commission has assessed TGPL its ACA unit rate of $0.0023/Mcf (0.0022/dt on TGPL's system) for the annual period commencing October 1, 1992.

TGPL states that copies of the filing are being mailed to affected customers and interested State Commissions.

In accordance with the provisions of 154.16 of the Commission's Regulations, copies of the filing are available for public inspection, during regular business hours, in a convenient form and place at TGPL's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21762 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-196-000]

Transwestern Pipeline Co.; Rescheduling of Technical Conference

September 3, 1992.

Take notice that the technical conference, previously scheduled for Friday, September 11, 1992 at 10 a.m., has been rescheduled. The conference has been rescheduled for Tuesday, September 29, 1992 at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21759 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-42-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 3, 1992.

Take notice that Transwestern Pipeline Company ("Transwestern") on August 31, 1992 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective October 1, 1992

96th Revised Sheet No. 5
61st Revised Sheet No. 6
7th Revised Sheet No. 6C

Transwestern states that the tariff sheets referenced above are being filed to adjust Transwestern's Annual Charge Adjustment (ACA) pursuant to Section 23 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1. The adjustment of the ACA Surcharge is determined each fiscal year pursuant to the Commission's Order No. 472. The ACA Surcharge of $0.0022/dth as determined by the Commission on July 27, 1992, reflects a decrease of $0.0001/dth from the currently effective ACA Surcharge of $0.0023/dth.

Transwestern requested any waiver of any Commission Regulation and its tariff provisions as may be required to allow the tariff sheets referenced above to become effective on October 1, 1992.

Transwestern states that copies of the filing were served on its jurisdictional

customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21770 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-74-000]

U-T Offshore System; Proposed Changes In FERC Gas Tariff

September 3, 1992.

Take notice that U-T Offshore System (U-TOS) tendered for filing on August 31, 1992 Fifth Revised Sheet No. 5 to Second Revised Volume No. 1 of its FERC Gas Tariff. The proposed effective date of this tariff sheet is October 1, 1992.

U-TOS states that the purpose of the instant filing is to reflect a decrease of $0.0001 per Mcf in the Annual Charge Adjustment (ACA) Charge in the commodity portion of U-TOS' transportation rates. Pursuant to Order 472, the Commission has assessed U-TOS its annual ACA charges based on $0.0023 per Mcf for the annual period commencing October 1, 1992. In accordance with Sections 4.8 and 4.7 of Rate Schedules FT and IT, respectively, contained in Second Revised Volume No. 1 and Article 8 of Rate Schedules T-1 through T-11 contained in Original Volume No. 2 of U-TOS' FERC Gas Tariff, U-TOS is submitting herewith for filing Fifth Revised Sheet No. 5 which tracks the Commission approved ACA unit rate of $0.0023 per Mcf commencing October 1, 1992.

U-TOS states the copies of the filing are being mailed to each of its Shippers for whom transportation service is being provided.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21776 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-26-000]

United Gas Pipe Line Co.; Conference

September 3, 1992.

Take notice that on Thursday, September 17, 1992, and, if necessary, Friday, September 18, 1992, a conference will be convened in the above-captioned restructuring docket to discuss United Gas Pipe Line Company's summary of its proposed plan for implementation of Order No. 636.

The conference will be held at the Embassy Row Hotel, 2015 Massachussetes Avenue, NW., Washington, DC 20036. The conference will begin at 10 a.m. on September 17, 1992. All interested parties are invited to attend. Attendance at the conference will not confer party status. For additional information, interested persons can call Ingrid Olson at (202) 208-0691 or Bill Lansinger at (202) 208-2082.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21764 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Special Research Grant Program Notice 92-21: Medical Applications Program

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research (ER), U.S. Department of Energy, announces its interest in receiving applications for Special Research Grants in support of the Medical Applications Program. This notice addresses one specific area, molecular nuclear medicine, within the Medical Applications Program. In particular, responses to this notice should involve development of new radioactive probes to target molecular sites with the potential for achieving improved diagnostic or therapeutic applications.

DATES: Formal applications submitted in response to this Notice must be received by the Acquisition and Assistance Management Division by 4:30 p.m., EST, January 8, 1993, to be accepted for a merit review in March 1993 and to permit timely consideration for award in Fiscal Year 1993.

ADDRESSES: Formal applications referencing Program Notice 92-21 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER-64, Washington, DC 20585, Attn: Program Notice 92-21. The following address must be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Acquisition and Assistance Management Division, ER-64, 19901 Germantown Road, Germantown, Maryland 20874.

FOR FURTHER INFORMATION CONTACT: Dr. Gerald Goldstein, Office of Health and Environmental Research, ER-73 (GTN), Office of Energy Research, U.S. Department of Energy, Washington, DC 20585, (301) 903-5348.

SUPPLEMENTARY INFORMATION: Potential applicants are strongly encouraged to submit a brief preapplication in accordance with 10 CFR 600.10(d)(2), which consists of two or three pages of narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research objectives of the Medical Applications Program. Preapplications referencing Program Notice 92-21 should be received by October 2, 1992, and sent to Dr. Gerald Goldstein, Office of Health and Environmental Research, ER-73, Washington, DC 20585, (301) 903-5348. Telephone and telefax numbers are required to be part of the preapplication. A response to the preapplications discussing the program relevance of a formal application will be communicated by October 30, 1992.

It is essential that responses to this Notice propose an integrated, multidisciplinary program blending research in molecular biology, radiochemistry, and nuclear medicine.

Research goals include development of new labeled probes designed to target selected disease-associated molecular sites such as neuroreceptors, hormone receptors, tumor-related membrane receptors, and other receptor sites associated with pathological conditions. Other important targets include genetic abnormalities leading to defects in metabolic pathways or normal physiology. Special emphasis should be placed on probes that bind very selectively to their target sites, are easily detected and measured in *in vivo* studies, and have potential application in diagnosis or therapy.

It is anticipated that approximately $3 million will be available for grant awards during FY 1993 contingent upon availability of appropriated funds. Previous awards have ranged from $100,000 per year up to $400,000 per year with terms lasting up to 3 years. Similar award sizes are anticipated for new grants. Funding of multiple year grant awards is expected, and is also contingent upon availability of funds.

Information about development and submission of applications, eligibility limitations, evaluation and selection processes, and other policies and procedures may be found in the ER Application and Guide for the Special Research Grants Program and 10 CFR part 605. The application kit and guide is available from the U.S. Department of Energy, Acquisition and Assistance Management Division, Office of Energy Research, ER–64, Washington, DC 20585. Instructions for preparation of an application are included in the application kit. Telephone requests may be made by calling (301) 903–5349. The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC, on September 2, 1992.

D. D. Mayhew,

Deputy Director for Management Office of Energy Research.

[FR Doc. 92–21808 Filed 9–9–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4230–9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 13, 1992.

For Further Information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances.

Title: Toxic Chemical Release Inventory (TRI) Reporting Activities Under Section 313 of the Emergency Planning and Community Right-to-Know Act; (EPA ICR No. 1363.05; OMB No. 2070–0093). This ICR requests renewal of the existing clearance.

Abstract: Under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), Form R must be used by owners and operators of certain facilities that manufacture, import, process or otherwise use listed toxic chemicals to annually report their release of those chemicals to each environmental medium. In addition, the Pollution Prevention Act of 1990 requires facilities subject to section 313 reporting to provide additional information on source reduction and recycling activities beginning with the 1991 calendar year.

EPA is required to make the data available to the public through an on-line computer data base as well as other means.The TRI data base is available through the National Library of Medicine's TOXNET computer system.

These reports are intended to ensure that communities through the country are prepared to respond to chemical accidents and to provide the public with information on hazardous and toxic chemicals used and released in their communities. The information is also intended to assist government agencies, researchers, and others in the conduct of research and data gathering, and to aid in the development of regulations, guidelines, and studies.

Burden Statement: The annual requirement of reporting by Form R is 211 hours per facility for those not required to comply with supplier notification. Given an average of 4 reports per facility, this is a burden of approximately 53 hours per report. For facilities which are required to comply with the supplier notification provision, the annual burden is 235 hours per facility, or 59 hours per report. The public reporting burden for submitting a petition is estimated to average 185 hours per response, including time for reviewing the guidance document, planning and conducting the literature searches, analyzing the information, and writing and reviewing the petition.

Respondents: Owners or operators of facilities that have 10 or more full-time employees and manufacture or process more than 25,000 pounds or otherwise use more than 10,000 pounds of a listed toxic chemical, and are in Standard Industrial Classification (SIC) codes 20–39; public interest groups, or anyone else concerned about adding or deleting a chemical from the list.

Estimated No. of Respondents: 160,232 for compliance determination only, 24,750 Form R submitting facilities, and 3,250 supplier notification facilities.

Estimated Total Annual Burden on Respondents: 6,470,000 hours.

Frequency of Collection: Annually for Form R, once per petition.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: September 3, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92–21783 Filed 9–9–92; 8:45 am]

BILLING CODE 6560–59–M

[EPA/OSW; FRL–4203–4]

Availability of the Draft 1993 Guidance for Capacity Assurance Planning

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 104(c)(9) of CERCLA requires states requesting remedial action funds to provide an assurance to EPA of the availability of hazardous waste treatment or disposal capacity to manage the hazardous wastes expected to be generated within their state over twenty years. The 1993 draft Guidance for Capacity Assurance Planning presents a national approach that focuses on sufficient capacity to treat and dispose of the projected demand of hazardous wastes. Also, available is an addendum to the draft guidance

describing alternative approaches on some issues. In this notice, we are requesting comments on the approach and methodology presented in the draft guidance and the addendum. The draft guidance was previously made available to the states and certain industrial and environmental groups for comment. Other interested parties should contact the Agency to receive a copy of the guidance and/or addendum. It is not necessary to resubmit comments previously made.

DATES: Comments on this notice must be received on or before October 13, 1992.

ADDRESSES: Written comments of any length will be accepted. Commenters must send an original and two copies of their comments to: RCRA Docket Information Center, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street SW., Wash., DC 20460. Comments must include the docket number F-92-CAGA-FFFFF. The public docket is located at EPA HQ, room M2427 and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Public review of docket materials is by appointment only. Call (202) 260-9327 for appointments. Copies cost $.15/page.

FOR FURTHER INFORMATION CONTACT: For information on this notice and specific aspects of the guidance, contact Robert Burchard, Office of Solid Waste (OS-321W), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (703) 308-8450.

Don R. Clay,

Assistant Administrator.

[FR Doc. 92-21782 Filed 9-9-92; 8:45 am]

BILLING CODE 6560-50-M

[OPP-36184A; FRL-4163-5]

Workshop on Incentives for the Development, Registration, and Use of Reduced Risk Pesticides

AGENCY: Environmental Protection Agency.

ACTION: Notice; announcement of meeting and extension of comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) published a notice on "Incentives for Development and Registration of Reduced Risk Pesticides" in the **Federal Register** of Monday, July 20, 1992 (57 FR 32140). That notice solicited comments on potential policies employing economic incentives to encourage the development, registration and use of pesticides or pest control practices that present reduced risks to public health and the environment. This notice announces a workshop sponsored by EPA to further explore the issues and suggestions raised in response to the July 20 notice. The Agency recognizes and intends that discussions at the workshop may stimulate comments or suggestions beyond those submitted in response to the July 20, 1992 notice, or those stated at the workshop. Therefore, this notice also extends the comment period.

DATES: The workshop will be held on Monday, October 5, 1992, from 8 a.m. to 5 p.m., and on Tuesday, October 6, 1992, from 8:30 a.m. to 11 a.m. The comment period is extended from September 18, 1992, until November 5, 1992.

ADDRESSES: The workshop will be held at the Doubletree Hotel, 300 Army Navy Drive, Arlington, VA 22202. Comments should be submitted in accordance with the information provided in the July 20, 1992 **Federal Register** notice, "Incentives for Development and Registration of Reduced Risk Pesticides."

FOR FURTHER INFORMATION CONTACT: For information on the workshop schedule, location and reservations (by mail): Marilyn Millane, Walcoff and Associates, 635 Slaters Lane, Suite 400, Alexandria, VA 22314. Telephone: (703) 684-5588, Fax: (703) 548-0426. For information on the workshop content, issues, agenda, or presentations (by mail): Stephanie R. Irene, Deputy Director, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location: Crystal Mall #2, Rm. 713, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Telephone: (703) 305-5447, Fax: (703) 305-6920.

SUPPLEMENTARY INFORMATION: EPA is interested in the views of the public on such issues as criteria for distinguishing reduced risk and higher risk pesticides; incentives and disincentives that would influence registrants and users to make decisions that favor reduced risk pesticides; whether the Agency should publish a list of higher risk pesticides; and requirements for registrants seeking to register alternatives to higher risk pesticides. We hope to use this forum to encourage constructive debate that will contribute to solutions. The workshop will feature presentations, breakout sessions, and opportunity to discuss these issues among a wide range of interested parties. The workshop will be open to the public but the seating capacity is limited to about 250. People interested in attending the workshop should register as soon possible.

Dated: September 12, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92-21802 Filed 9-9-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-59311A; FRL-4163-4]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-92-16. The test marketing conditions are described below.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Darlene Jones, New Chemicals Branch, Chemical Control Division (TS-794), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, D.C. 20460, (202) 260-2279.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-92-16. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in

the application and in this notice must be met.

The following additional restrictions apply to TME-92-16. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME-92-16.

Date of Receipt: July 21, 1992.

Notice of Receipt: August 12, 1992 (57 FR 36096).

Applicant: BASF Corporation.

Chemical: (G) Self-crossing butadiene styrene copolymer.

Use: (S) Binder for nonwovens.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Confidential.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

Dated: August 31, 1992.

John W. Melone,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-21803 Filed 9-9-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

The Georgia Ports Authority et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200102-005.

Title: Georgia Ports Authority/Ocean Star Container Line.

Parties:

The Georgia Ports Authority ("GPA")
Ocean Star Container Line ("Ocean")

Synopsis: The amendment revises the rate schedule that is applicable to the Agreement to reflect increases for certain marine operations between GPA and Ocean.

Agreement No.: 224-200230-004.

Title: Georgia Ports Authority/ Wilhelmsen A/S.

Parties:

The Georgia Ports Authority ("GPA")
Wilhelmsen A/S ("Wilhelmsen")

Synopsis: The amendment revises the rate schedule that is applicable to the Agreement to reflect increases for certain marine operations between GPA and Wilhelmsen.

Agreements No.: (1) 224-200103-008, (2) 224-200421-003, (3) 224-200403-003, (4) 224-200371-004.

Title: (1) Georgia Ports Authority ("GPA")/A/S Ivarans Rederi Terminal Agreement, (2) GPA/Polish Ocean Terminal Agreement, (3) GPA/Safbank Terminal Agreement, (4) GPA/ Compagnie Generale Maritime Terminal Agreement

Parties:

(1) Georgia Ports Authority
A/S Ivarans Rederi Line
(2) Georgia Ports Authority
Polish Ocean Line
(3) Georgia Ports Authority
Safbank
(4) Georgia Ports Authority
Compagnie Generale Maritime

Synopsis: The amendments revise the rate schedule of each agreement.

Agreement No.: 224-200381-003.

Title: Georgia Ports Authority/Zim-Israeli Shipping Company Marine Terminal Agreement.

Parties:

The Georgia Ports Authority ("GPA")
Zim Israeli Shipping Company ("Zim")

Synopsis: The Agreement revises the rate schedule to reflect increases for certain terminal operations between GPA and ZIM.

Agreement No.: 224-200416-006.

Title: Georgia Ports Authority/Croatia Line.

Parties:

The Georgia Ports Authority ("GPA")
Croatia Line ("Croatia")

Synopsis: The amendment revises the rate schedule that is applicable to the Agreement to reflect increases for certain marine operations between GPA and Croatia.

Agreement No.: 224-200647-001.

Title: Georgia Ports Authority/ Tricontinental Service.

Parties:

The Georgia Ports Authority ("GPA")
Tricontinental Service
("Tricontinental")

Synopsis: The amendment revises the rate schedule that is applicable to the Agreement to reflect increases for certain marine operations between GPA and Tricontinental.

Agreement No.: 224-200696.

Title: South Carolina/Hoegh-Ugland Auto Carriers Terminal Agreement.

Parties:

South Carolina State Port Authority
("Port")
Hoegh-Ugland Auto Liners A/S
("HUAL")

Synopsis: The Agreement provides that the Port will provide receiving services for vehicles to be exported aboard Hauls' vessels. The Agreement has a term of three years.

Agreement No.: 224-200697.

Title: Ryan-Walsh, Inc., Cooper/T. Smith, Transocean Terminal Operators Terminal Agreement.

Parties:

Ryan-Walsh, Inc.
Transocean Terminal Operators, Inc.
Cooper/T. Smith Stevedoring
Company, Inc.

Synopsis: The proposed Agreement will permit the parties to discuss and exchange information to determine whether it would be feasible for them to establish a marine terminal joint venture company in the State of Louisiana. The parties have requested a shortened review period.

Dated: September 4, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-21786 Filed 9-9-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

E.J. Heymans, Sr. Revocable Trust; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than September 30, 1992.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. E.J. Heymans, Sr. Revocable Trust, Menomonie, Wisconsin; to acquire 35.2 percent of the voting shares of Dunn County Bancshares, Inc., Menomonie, Wisconsin, and thereby indirectly acquire Bank of Menomonie, Menomonie, Wisconsin.

Board of Governors of the Federal Reserve System, September 3, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-21742 Filed 9-9-92; 8:45 am]

BILLING CODE 6210-01-F

MBNA Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 2, 1992.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. MBNA Corporation, Newark, Delaware; to engage *de novo* through its subsidiary, MBNA Consumer Services, Inc., Newark, Delaware, in making consumer loans that will be secured by second mortgages pursuant to § 225.25(b)(1)(iii); and offering credit insurance (life, disability, and involuntary unemployment) pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Claiborne Holding Company, Inc., Tazewell, Tennessee; to engage *de novo* through its subsidiary, Premier Insurance Agency, Inc., Tazewell, Tennessee, in insurance agency and underwriting activities pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in Tazewell, Tennessee.

Board of Governors of the Federal Reserve System, September 3, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-21753 Filed 9-9-92; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 081792 AND 082892

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Household International, Inc., Northeast Bancorp, Inc., Union Trust Company	92-1324	08/17/92
Hubbell Incorporated, Hipotronics, Inc., Hipotronics, Inc	92-1355	08/17/92

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 081792 AND 082892—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Aaron U. Jones, Champion International Corporation, Champion International Corporation	92-1369	08/17/92
Stanley J. Gulkin, CrossLand Federal Savings Bank, CrossLand Premium Funding, Inc	92-1313	08/18/92
Warburg, Pincus Capital Company, L.P., Warburg, Pincus Capital Company, L.P., Selkirk Cogen Partners II, L.P.	92-1339	08/19/92
Union Camp Corporation, Robert H. Valentin, ABC Container Corporation & Puerto Rico Box Co., Inc	92-1356	08/19/92
Acadia Partners, L.P., BBA Group PLC (a British corporation), Page Avjet Airport Services, Inc	92-1065	08/20/92
BBA Group PLC, Acadia Partners, L.P., Butler Aviation International, Inc	92-1066	08/20/92
Bessemer Securities Corporation, Morgan Stanley Leveraged Equity Fund II, L.P., MS/Essex Holdings Inc	92-1357	08/20/92
Philips Electronics, N.V., Frederick W. Field, Interscope Holding Corporation	92-1370	08/20/92
NIKE, Inc., Oppenheimer-Palmieri Fund, L.P., OPF Acquisition Corp	92-1368	08/21/92
Franklin Resources, Inc., John M. Templeton, Templeton Global Investors, Inc. & Templeton	92-1386	08/21/92
John M. Templeton, Franklin Resources, Inc., Franklin Resources, Inc	92-1387	08/21/92
Tullett & Tokyo Forex International Limited, Gnubrokers Holding Inc., Gnubrokers Holding Inc	92-1402	08/21/92
Cascades Inc., Paperboard Industries Corporation, Paperboard Industries Corporation	92-1343	08/24/92
President Enterprises Corporation, Shansby Group (The), Famous Amos Chocolate Chip Cookie Corporation (The)	92-1345	08/24/92
Ferruzzi Finanziaria S.p.A., International Marine Holdings, Inc., International Marine Holdings, Inc	92-1377	08/24/92
Chemed Corporation, Omnicare, Inc., Medarco Corp., Omnia, Inc., Unidisco, Inc	92-1380	08/24/92
Equifax Inc., Halliburton Company, Health Economics Corporation	92-1401	08/24/92
Simon Engineering plc, Thomas E. Dalum, Hi-Ranger, Inc	92-1384	08/25/92
Hewlett-Packard Company, Texas Instruments Incorporated, Texas Instruments Incorporated	92-1328	08/26/92
Echlin Inc., Sprague Devices, Inc., Sprague Devices, Inc	92-1336	08/26/92
Petroleum Heat and Power Co., Inc., RAC Fuel Oil Corp., RAC Fuel Oil Corp	92-1340	08/26/92
Tele-Communications, Inc., Diversified Communications, Heritage Cablevision of Maine-I, Inc	92-1344	08/26/92
American General Corporation, Wachovia Corporation, Provident Financial Corporation	92-1385	08/26/92
First Western Corporation, Long-Term Credit Bank of Japan, Ltd., Greenwich Capital Financial, Inc	92-1390	08/27/92
Champion Healthcare Corporation, HCA—Hospital Corporation of America, HCA—Health Services of Texas, Inc	92-1338	08/28/92
McCown De Leeuw & Co. II, a California L.P., Industrial Capital Group, DEC International Corporation	92-1371	08/28/92
Trustees of the Estate of Bernice Pauahi Bishop, Peter Bedford, Hawaii Kai Development Company	92-1372	08/28/92
Jeffrey A. Marcus, Steven J. Simmons, Simmons Communications Company, L.P.	92-1378	08/28/92
Trustees of the Estate of Bernice Pauahi Bishop, Kemper Corporation, Hawaii Kai Development Company	92-1388	08/28/92
Alexander M. Vik, Prudential Insurance Company of America (The), Prudential-LMI Commercial Insurance Company	92-1396	08/28/92
Zell/Chilmark Fund, L.P., Carter Hawley Hale Stores, Inc., Carter Hawley Hale Stores, Inc	92-1410	08/28/92

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92-21728 Filed 9-9-92; 8:45 am]

BILLING CODE 6750-01-M

[File No. 901 0019]

Realty Computer Associates, Inc., d/b/a Computer Listing Service; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Missouri-based real-estate multiple listing service (MLS) from refusing to publish exclusive-agency listings, or restricting its members from offering such listings. In addition, the respondent would be prohibited from requiring, as a condition of membership or use of its MLS, that any applicant or member engage in real-estate brokerage full time, or that any applicant or member maintain an office located on commercially zoned property or within the respondent's service area.

DATES: Comments must be received on or before November 9, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: C. Steven Baker, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., suite 1437, Chicago, IL 60603. (312) 353-8156.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

The Federal Trade Commission, having initiated an investigation of certain acts and practices of Realty Computer Associates, a corporation, d/b/a Computer Listing Service ("CLS"), and it now appearing that CLS is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between CLS, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

(1) Proposed respondent CLS is a Missouri corporation with its principal office and place of business located at 6651 N. Oak Trafficway, No. 1, Gladstone, Missouri 64118.

(2) Proposed respondent admits all the jurisdictional facts set forth in the attached draft complaint.

(3) Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of the findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

(4) This agreement shall not become part of the public record of the

proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

(5) This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint attached hereto.

(6) This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to its Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto.When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

(7) Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

The following definitions shall apply to this order:

(1) "Multiple listing device" means a clearinghouse through which member real estate brokerage firms regularly exchange information on listings of real estate properties and share commissions with other members.

(2) "Listing agreement" means any agreement between a real estate broker and a property owner for the provision of real estate brokerage services.

(3) "Listing broker" means any broker who lists a real estate property with a multiple listing service pursuant to a listing agreement with the property owner.

(4) "Selling broker" means any broker, other than the listing broker, who locates the purchaser for a listed property.

(5) "Exclusive agency listing" means any listing under which a property owner appoints a broker as exclusive agent for the sale of the property, at an agreed commission, but reserves the right to sell the property personally to a direct buyer (one not procured in any way through the efforts of any broker) at an agreed reduction in the commission or with no commission owed to the agent broker.

(6) "CLS" means Realty Computer Associates, Inc., d/b/a Computer Listing Service and its successors, assigns, directors, officers, committees, agents, representatives, members, and employees.

I

It is ordered that respondent CLS, directly or indirectly, or through any corporation, subsidiary, division, or other device, in connection with the operation of a multiple listing service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

A. Restricting or interfering with:

(1) the publication on CLS's multiple listing service of any exclusive agency listing of a member; or

(2) any member's offering or accepting any exclusive agency listing:

Provided, however, that nothing contained in this subpart shall prohibit respondent from:

(a) including a simple designation, such as a code or symbol, that a published listing is an exclusive agency listing; or (b) applying reasonable terms and conditions equally applicable to the publication of any listing by CLS.

B. Adopting, maintaining or enforcing any bylaw, rule, regulation, policy, agreement or understanding, or taking any other action that has the purpose or effect of:

(1) Requiring as a condition of CLS membership or use of its multiple listing service that any applicant or member engage in real estate brokerage full time;

(2) Conditioning membership in CLS or use of its multiple listing service on any applicant or member maintaining a real estate office in a commercially zoned property; or

(3) Conditioning membership in CLS or use of its multiple listing service on any applicant or member maintaining a real estate office located within the confines of CLS's service area;

Provided, however, that nothing in this subpart shall prohibit respondent from adopting, maintaining, or enforcing any reasonable and nondiscriminatory policy to assure that its members are actively engaged in real estate brokerage and that listings published on respondent's multiple listing service are adequately serviced.

It is further ordered that CLS shall:

A. Within thirty (30) days after the date this order becomes final, furnish an announcement in the form shown in Appendix A to each member of CLS.

B. Within sixty (60) days after the date this order becomes final, amend its bylaws, rules and regulations, and all other of its materials to conform to the provisions of this order, and provide each member with a copy of the amended bylaws, rules and regulations, and other amended materials.

C. For a period of three (3) years after the date this order becomes final, furnish an announcement in the form shown in Appendix A to each new member of CLS within thirty (30) days of the new member's admission.

III

It is further ordered that CLS shall:

A. Within ninety (90) days after the date this order becomes final, submit a verified written report to the Federal Trade Commission setting forth in detail the manner and form in which CLS has complied and is complying with this order.

B. In addition to the report required by Paragraph III(A), annually for a period of three (3) years on or before the anniversary date on which this order becomes final, and at such other times as the Federal Trade Commission or its staff may by written notice to CLS require, file a verified written report with the Federal Trade Commission

setting forth in detail the manner and form in which CLS has complied and is complying with this order.

C. For a period of five (5) years after the date this order becomes final, maintain and make available to the Commission staff for inspection and copying, upon reasonable notice, all documents that relate to the manner and form in which CLS has complied with this order.

D. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in CLS, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in CLS that may affect compliance obligations arising out of this order.

Appendix A

[CLS's Regular Letterhead]

As you may be aware, the Federal Trade Commission has entered into consent decrees with several multiple listing services in order to halt certain multiple listing service practices that have been alleged to be unlawful restraints of trade. To avoid litigation, Realty Computer Associates, Inc., d/b/a Computer Listing Service ("CLS") has entered into such a consent agreement. The agreement is not an admission that CLS or any of its members has violated any law. For your information, CLS is prohibited from the following practices:

A. Restricting or interfering with:

(1) The publication on CLS's multiple listing service of any exclusive agency listing of a member; or

(2) Any member's offering or accepting any exclusive agency listing.

B. Adopting, maintaining or enforcing any bylaw, rule, regulation, policy, agreement or understanding, or taking any other action that has the purpose or effect of:

(1) Requiring as a condition of CLS membership or use of its multiple listing service that any applicant or member engage in real estate brokerage full time; or

(2) Conditioning membership in CLS or use of its multiple listing service on any applicant or member maintaining a real estate office in a commercially zoned property located within the confines of CLS's area map.

Realty Computer Associates, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from the Realty Computer Associates, Inc., d/b/a/ Computer Listing Service ("CLS").

The proposed consent order would settle charges by the Commission that CLS has violated Section 5 of the Federal Trade Commission Act by restraining competition among real estate brokers in Clay and Platte counties of metropolitan Kansas City, Missouri and its surroundings. The Commission charged CLS with injuring consumers by refusing to publish exclusive agency listings, requiring applicants and members to maintain offices in commercially zoned areas within the confines of CLS's service area; and, requiring real estate to be the primary business concern of members and applicants thereby possibly restricting access to the MLS by part-time brokers.

CLS has agreed to the proposed consent order for settlement purposes only and does not admit that it violated the law as alleged in the complaint.

The Commission has placed the proposed consent order on the public record for 60 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After the close of the comment period, the Commission will again review the agreement, will review the comments received, and will decide whether it should make the agreement's proposed order final or withdraw the agreement.

The Complaint

The Commission has prepared a complaint to issue along with the proposed order. The complaint alleges the CLS is a corporation that represents the vast majority of real estate brokers that deal in residential real estate in Clay and Platte counties. CLS members compete among themselves and with other real estate brokers. In 1990 sales of residential real estate through CLS totaled about $284 million.

According to the complaint, CLS has adopted rules that restrain competition in the delivery of brokerage services. For example, CLS has refused to accept "exclusive agency" listings for publication. These are agreements between home sellers and brokers whereby the homeowner does not pay a commission, or pays a reduced commission, if he or she makes the sale directly, without the assistance from the broker. Instead, CLS has only accepted "exclusive right to sell" listings for publication. These listings require payment to the broker in the event of any sale, whether or not the broker helps make the sale.

The complaint further alleges that CLS has been and is now requiring that each member broker or applicant for membership maintain a real estate office in a commercially zoned property located within the confines of the CLS's service area. This requirement may have the effect of restraining competition from brokerage firms located outside of CLS's service area.

Finally, according to the complaint CLS has been and is now requiring that each member broker's or applicant for membership's primary business concern must be that of listing or selling real estate. This requirement may impede new membership in CLS by part time or less than full time real estate brokers and impede entry into the residential real estate business in CLS's service area.

According to the complaint, the effects of these restraints have been to restrain competition in the delivery of real estate brokerage services, deprive consumers of the ability to negotiate listing agreements with different terms that they might find more attractive or beneficial, and substantially reduce the ability of residential property owners to compete with real estate brokers in locating purchasers. In addition, the membership requirements can act as barriers to entry, unreasonably restrain applicants from membership, and therefore put them at a competitive disadvantage.

The Proposed Consent Order

Part I of the proposed consent order describes the conduct prohibited by the order. Part I(A) prohibits CLS from refusing to publish exclusive agency listings or restricting or interfering with any member's offering or accepting any exclusive agency listing.

Part I(B) of the order would prohibit CLS from requiring as a condition of CLS membership of use of its multiple listing service that any applicant or member engage in real estate brokerage full time. Also, this part of the order would prohibit CLS from requiring that a new member be located on commercially zoned property within the confines of the CLS service area.

Part II(A) requires CLS to furnish, within 30 days, an announcement of this order to each member of CLS. Part II(B) requires CLS to amend its bylaws to conform them with the terms of the order within 60 days of the final date of the order. Part II(C) requires, for three years, that CLS furnish a copy of the order to each new member who requests it.

The remainder of the order's provisions pertain to the filing of compliance reports and notification of changes of the MLS's corporate form, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any change in its incorporation that may

affect compliance obligations arising out of the order.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 92-21726 Filed 9-9-92; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Eligibility To Use GSA Sources of Supply and Services

AGENCY: Federal Supply Service, GSA.

ACTION: Notice.

SUMMARY: This notice provides information on the eligibility to use GSA sources of supply and services. This action is necessary to provide guidance concerning eligibility requirements to the U.S. Government and other organizations which need to know what activities may be eligible to use GSA sources of supply and services.

FOR FURTHER INFORMATION CONTACT: Raywood Holmes, Regulations Management Staff (703) 305-7525.

SUPPLEMENTARY INFORMATION: This notice contains text that was extracted from GSA Order ADM 4800.2D, dated August 10, 1992, Subject: Eligibility to use GSA sources of supply and services. The text reads as follows:

Subject: Eligibility To Use GSA Sources of Supply and Services.

1. Purpose

This order provides definitions and listings of those agencies and other activities authorized to use GSA sources of supply and services. It also provides definitive guidelines concerning eligibility requirements.

2. Background

The Federal Property and Administrative Services Act of 1949, as amended, authorizes the Administrator to procure and supply personal property and nonpersonal services for the use of executive agencies, mixed-ownership Government corporations, as identified in the Government Corporation Control Act, and the District of Columbia. Other organizations may be eligible by reason of enabling statutory authority.

3. Definition

GSA sources of supply and services are defined as those support programs administered by GSA and prescribed in the Federal Property Management Regulations (FPMR) Parts 101-26—Procurement Sources and Programs, 101-39—Interagency Fleet Management Systems, 101-40—Transportation and Traffic Management, 101-43 thru 101-46, 101-48 and 101-49, Utilization and Disposal Programs; in the Federal Information Resources Management Regulation (FIRMR), 41 CFR ch. 201-32 for ADP and 41 CFR ch. 201-40 for telecommunications, and in the Federal Travel Regulation, 41 CFR 301-15, Travel Management Programs.

4. Authority to Use GSA Sources of Supply and Services

The authority to use GSA sources of supply and services is established by statute (see par. 5), regulation, and the specific terms of certain contracts.

5. Eligible Activities

Organizations eligible to use GSA sources of supply and services are covered by the provisions of the Federal Property and Administrative Services Act of 1949, as amended, hereafter referred to as the Property Act. Definitions of the organizations follow. It is noted, however, that although an organization may be eligible to use these sources, it does not necessarily mean that resources or assets are available, especially in the case of the Interagency Fleet Management System, or that it would always be practical for GSA to make such sources available, or further still, that all contracts allow participation by non-Federal organizations. Also, certain entities may be eligible to use only specific GSA sources and/or services.

a. Executive Agencies

Subsections 201(a) and 211(b) of the Property Act provide for executive agencies' use of GSA sources of supply and services. Executive agencies, as defined in subsection 3(a) of the Property Act, include:

(1) *Executive departments.* These are the cabinet departments defined in 5 U.S.C. 101 and are listed in app. A.

(2) *Wholly owned Government corporations.* These are defined in 31 U.S.C. 9101 and are listed in app. A.

(3) *Independent establishments in the executive branch of the Government.* These are generally defined by 5 U.S.C. 104. However, it is often necessary to consult specific statutes, legislative histories, and other references to determine whether a particular establishment is within the executive branch. To the extent that GSA has made such determinations, the organizations qualifying under this authority are listed in app. A.

b. Other Federal Agencies, Mixed-Ownership Government Corporations, and the District of Columbia

Subsections 201(b) and 211(b) of the Property Act authorize the Administrator of General Services to provide GSA sources of supply and services to these organizations upon request.

(1) *Other Federal agencies.* These are Federal agencies defined in subsection 3(b) of the Property Act that are not in the executive branch; i.e., any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction). To the extent that GSA has made such determinations, the organizations qualifying under this authority are listed in app. B.

(2) *Mixed-ownership Government corporations.* These are included in 31 U.S.C. 9101. They are listed in app. B.

(3) *District of Columbia.* The Government of the District of Columbia is eligible to use GSA sources of supply and services. The Government of the District of Columbia, and those parts thereof that have been determined by GSA to be eligible to use its sources of supply and services, are listed in app. B.

c. The Senate, House of Representatives, and Activities Under the Direction of the Architect of the Capitol

These organizations are eligible to use GSA sources of supply and services, under subsection 602(e) of the Property Act, upon request. To the extent that GSA has determined that various activities qualify under this authority, they are listed in app. B.

d. Other Organizations Authorized Under the Authority of the Property Act

GSA has further determined, under the Property Act, that certain other types of organizations are eligible to use its sources of supply and services.

(1) *Cost-reimbursement contractors (and subcontractors) as properly authorized.* Part 51 of the Federal Acquisition Regulation (FAR) provides that agencies may authorize certain contractors (generally cost-reimbursement contractors) to use GSA schedules, GSA stock, and GSA contract travel and transportation services. In each case, the written authorization must conform to the requirements of FAR part 51, Use of Government Sources by Contractors. Subpart 51.2 prescribes policies and procedures governing Federal agencies in authorizing cost-reimbursement contractors to obtain interagency fleet

management system vehicles and related services. The eligibility of agency-authorized cost-reimbursement contractors to obtain Government contract air/rail fares is limited to the city-pair routes of contract carriers that have agreed to furnish the GSA contract fare to such contractors. Regulations governing the use of contract air/rail passenger service by cost-reimbursement contractors are found at 41 CFR part 301–15, Subpart B, specifically, section 301–15.24(h). GSA contracts for other travel related services; e.g., travel management services or contractor-issued charge cards, generally do not include cost-reimbursement contractors.

(2) *Fixed-price contractors (and subcontractors) purchasing security equipment.* Under section 201 of the Property Act, the Administrator has determined that fixed-price contractors and lower-tier subcontractors who are required to maintain custody of security classified records and information may purchase security equipment from GSA. Procedures regarding these organizations are set forth in FRMR 101–26.507 and 101–26.407.

(3) *Non-Federal firefighting organizations cooperating with the Forest Service.* Under section 201 of the Property Act, it has been determined that certain non-Federal firefighting organizations may purchase wildfire suppression equipment and supplies from the Federal Supply Service (FSS) (Article V, Agreement No. FSS 87–1, May 26, 1987).

(4) *Department of the Interior, Bureau of Indian Affairs.* Under a Memorandum of Understanding between the Department of the Interior and the General Services Administration (FSS–83–3) and Public Law 93–638, tribal Government grantees of the Bureau of Indian Affairs may use GSA sources of supply and services.

e. Other Statutes

Other statutes authorize specific organizations to use GSA sources of supply and services. These organizations are listed in app. B, with appropriate annotations. The major categories of such organizations include:

(1) *Certain charitable institutions.* Pursuant to Public Law 95–355, the following activities are eligible to use GSA supply sources and are also listed in app. B:

(a) Howard University;

(b) Gallaudet University;

(c) National Technical Institute for the Deaf; and

(d) American Printing House for the Blind.

(2) *Certain territories.* Pursuant to Public Law 102–247, certain territories of the United States, as indicated in app. B, are eligible to use GSA sources of supply and services. (48 U.S.C. 1469e)

(3) *Foreign entities.* Section 607 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2357, provides that the President may authorize certain countries and organizations to use GSA sources of supply and services as part of the foreign policy of the United States. To the extent that the Department of State has made determinations on behalf of the President, they are included in app. C. Purchases made by international organizations through GSA sources of supply and services must be for civilian use only.

(4) *Nonappropriated fund activities.* FPMR 101–26.000 provides that military commissaries and nonappropriated fund activities may use GSA sources of supply and services for their own use, not for resale, unless otherwise authorized by the individual Federal agency and concurred in by GSA.

6. Ineligible Activities

Except for the acquisition of excess personal property through sponsoring agencies, Federal grantees are ineligible to use GSA sources of supply and services. In addition, a cost-reimbursement contractor cannot transfer procurement authorization to a third party leasing company to use GSA sources of supply and services, unless the leasing company has an independent authorization to use GSA contracts.

7. Travel

Organizations seeking to use GSA sources of supply and services for travel/transportation must obtain a separate determination. This is necessary to determine whether or not the requesting entity is eligible under the language of the specific contract for the service being requested; i.e., travel management services, travel and transportation payment and expense control system (including contractor-issued charge cards for official travel), and/or air/rail passenger transportation.

8. Excess, Surplus, and Forfeited Property

The eligibility of activities and organizations to obtain supplies and services from GSA's personal property utilization and disposal programs is governed by FPMR parts 101–43 thru 101–46, 101–48, and 101–49, and not by this order.

9. Determination of Eligibility

Activities or organizations other than those covered in the appendixes to this order may be eligible to use GSA sources of supply and services. Requests to use these services received from activities or organizations whose eligibility is in question must be forwarded to the Office of the Controller, Attention: Regulations Management Staff (FPR), for determination.

Appendix A.—Executive Agencies

The following have been determined to be "executive agencies," or parts thereof, for the purpose of using GSA sources of supply and services. This list is not all-inclusive; other activities also may be eligible to use GSA on a case-by-case basis (see par. 9). Listed here are major Federal activities and their subordinate entities about which inquiries have been received.

ACTION
Agency for International Development
Agriculture, Department of
Air Force, Department of the
Alaska Natural Gas Transportation System
American Battle Monuments Commission
Army Corps of Engineers
Army, Department of the
Board of International Broadcasting
Bonneville Power Administration (administrative and housekeeping items)
Bureau of Land Management
Central Intelligence Agency
Commerce, Department of
Commission on Civil Rights
Commission on Fine Arts
Commodity Credit Corporation
Commodity Futures Trading Commission
Consumer Products Safety Commission
Defense, Department of
Defense agencies and Joint Service Schools
Education, Department of
Energy, Department of
Environmental Protection Agency
Equal Employment Opportunity Commission
Executive Office of the President
Export-Import Bank of U.S.
Farm Credit Administration
Federal Communications Commission
Federal Election Commission
Federal Trade Commission
Forest Service, U.S.
General Services Administration
Government National Mortgage Association
Health and Human Services, Department of
Housing and Urban Development, Department of
Inter-American Foundation
Interior, Department of the
Interstate Commerce Commission
Justice, Department of
Kennedy Center
Labor, Department of
Merit Systems Protection Board
National Aeronautics and Space Administration
National Archives and Records Administration
National Credit Union Administration (not individual credit unions)
National Council on the Handicapped
National Endowment for the Arts
National Endowment for the Humanities
National Labor Relations Board
National Science Foundation

National Transportation Safety Board
Navy, Department of the
Nuclear Regulatory Commission
Occupational Safety and Health Review Commission
Office of Personnel Management
Overseas Private Investment Corporation
Panama Canal Commission
Peace Corps
Pennsylvania Avenue Development Corporation
Pension Benefit Guaranty Corporation
Postal Rate Commission
Railroad Retirement Board
Resolution Trust Corporation
St. Elizabeths Hospital
St. Lawrence Seaway Development Corporation
Securities and Exchange Commission
Selective Service System
Small Business Administration
Smithsonian Institution
State, Department of
Tennessee Valley Authority
Trade and Development Program
Transportation, Department of
Treasury, Department of the
U.S. Arms Control and Disarmament Agency
U.S. Information Agency
U.S. International Development Corporation Agency
U.S. International Trade Commission
U.S. Postal Service
Veterans Affairs, Department of

Appendix B—Other Eligible Users

The following have been determined to be eligible to use GSA sources of supply and services, in addition to the organizations listed in appendixes A and C. An asterisk indicates that special limitations may apply (see subpar. 5e(2)). This list is not all-inclusive; other activities also may be eligible to use GSA sources. The eligibility of those will be ruled upon by GSA on a case-by-case basis (see par. 9).

Administrative Conference of the U.S.
Administrative Office of the U.S. Courts
Advisory Commission on Intergovernmental Relations
Advisory Committee on Federal Pay
American Printing House for the Blind
American Samoa, territorial and local governments of
Architect of the Capitol
Architectural and Transportation Barriers Compliance Board
Banks for Cooperatives
Certain nonappropriated fund activities (generally, not for resale)
Coast Guard Auxiliary (through the U.S. Coast Guard)
Committee for Purchase from the Blind and other Severely Handicapped
Contractors and subcontractors—cost-reimbursement (as authorized by the applicable agency's contracting official)
Contractors and subcontracts—fixed-price (security equipment only when so authorized by the applicable agency's contracting official)
Courts, Federal (not court reporters)
Delaware River Basin Commission
District of Columbia, Government of the
Farm Credit Banks
Federal Deposit Insurance Corporation
Federal Emergency Management Agency
Federal Home Loan Banks
Federal Intermediate Credit Bank
Federal Land Bank
Federal Reserve Board of Governors
Firefighters, Non-Federal (as authorized by the Forest Service, U.S. Department of Agriculture)
Gallaudet University
General Accounting Office
Government Printing Office
Guam, territorial and local governments of
Harry S. Truman Scholarship Foundation
House of Representatives, U.S.
Howard University (including hospital)
Institute of Museum Services*
Japan-United States Friendship Commission
Land Grant Institutions**
Legal Services Corporation (not its grantees)
Library of Congress
Marine Mammal Commission
National Bank for Cooperatives (CoBank)
National Buildings Museum
National Capital Planning Commission*
National Gallery of Art
National Guard Activities (only through U.S. Property and Fiscal Officers)
National Railroad Passenger Corporation (i.e., AMTRAK)
National Technical Institute for the Deaf
Navajo and Hopi Indian Relocation Commission
Neighborhood Reinvestment Corporation
Northern Mariana Islands, Commonwealth of the territorial and local governments
Office of the Federal Inspector for the Alaska Natural Gas Transportation System
Prospective Payment Assessment Commission
Senate, U.S.
Susquehanna River Basin Commission
Trust Territory of the Pacific Islands, Government of
U.S. Railway Association
U.S. Representative, Office of Joint Economic Commission
CENPRO Project Saudi Arabia (when Saudi government cannot supply)
U.S. Soldiers' and Airmen's Home
U.S. Synthetic Fuels Corporation
Virgin Islands, territorial and local governments of (including Virgin Islands Port Authority)
Washington Metropolitan Area Transit Authority
Water Resources Council

*Financial service—payroll only.
**As cost-reimbursement contractors.

Appendix C—International Organizations

The following have been determined to be eligible to use GSA sources of supply and services, in addition to the organizations listed in appendixes A and B. This list is not all-inclusive; other activities also may be eligible to use GSA sources. Also, as stated in par. 5, certain entities may be eligible to use only specific GSA sources and/or services. The eligibility of activities not listed will be ruled upon by GSA on a case-by-case basis (see par. 9).

African Development Foundation
African Development Fund
American Red Cross
Asian Development Bank
Caribbean Organization
Customs Cooperation Council
European Space Research Organization
Food and Agriculture Organization of the United Nations
Great Lakes Fishery Commission
Inter-American Defense Board
Inter-American Development Bank
Inter-American Institute of Agriculture Sciences
Inter-American Investment Corporation
Inter-American Statistical Institute
Inter-American Tropical Tuna Commission
Intergovernmental Maritime Consultive Organization
Intergovernmental Committee for European Migration
International Atomic Energy Agency
International Bank of Reconstruction and Development (World Bank)
International Boundary Commission—United States and Canada
International Boundary and Water Commission—United States and Mexico
International Center for Settlement of Investment Disputes
International Civil Aviation Organization
International Coffee Organization
International Cotton Advisory Committee
International Development Association
International Fertilizer Development Center
International Finance Corporation
International Hydrographic Bureau
International Institute for Cotton (formerly International Cotton Institute)
International Joint Commission—United States and Canada
International Labor Organization
International Maritime Satellite Organization
International Monetary Fund
International Pacific Halibut Commission
International Pacific Salmon Fisheries Commission—Canada
International Secretariat for Volunteer Services
International Telecommunications Satellite Organization
International Telecommunications Union
International Wheat Council
Lake Ontario Claims Tribunal
Multinational Force and Observers
Multinational Investment Guarantee Agency (M.I.G.A.)
North American Treaty Organization (NATO)
Organization of African Unity
Organization of American States
Organization for Economic Cooperation and Development
Pan American Health Organization
Radio Technical Commission for Aeronautics
South Pacific Commission
United International Bureau for the Protection of Intellectual Property
United Nations
United Nations Educational, Scientific, and Cultural Organization
Universal Postal Union
World Health Organization
World Intellectual Property Organization
World Meteorological Organization
World Tourism Organization

Dated: September 2, 1992.

William Marshall,

Director, Regulations Management Staff.

[FR Doc. 92-21719 Filed 9-9-92; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notification of Expiring Project Periods for Community and Migrant Health Centers

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that a total of 244 Community Health Center and Migrant Health Center (C/MHC) grantees will reach the end of their project periods during fiscal year (FY) 1993. Assuming the availability of sufficient appropriated funds in FY 1993, it is the intent of HRSA to continue to support health services in these areas, given the unmet need inherent in their designation as medically underserved. HRSA will open competition for awards under sections 330 and 329 of the Public Health Service (PHS) Act (42 U.S.C. 254b and 254c respectively) to support health services in the areas currently served by these grants.

This notice will provide interested parties the opportunity to gather information and decide whether to pursue Federal funding for a community or migrant health center. During this process, communication with Regional Office staff is essential (see appendix I). A subsequent notice will be published in the **Federal Register** to announce the availability of funds for FY 1993 and provide detailed information on the grant application process and review criteria.

DATES: Current grant expiration dates vary by area throughout FY 1993. Applications for competing continuation grants are due 120 days prior to expiration of the current grant award.

SUPPLEMENTARY INFORMATION: The C/MHC programs are carried out under the authority of sections 330 and 329 of the Public Service Act. The program regulations are codified in title 42 of the Code of Federal Regulations (CFR), parts 51c and 56. The C/MHC programs are designed to promote the development and operation of community-based primary health care service systems in medically underserved areas for medically underserved populations.

The list of C/MHCs whose project periods expire in FY 1993 is set forth in appendix II. A project period is the total amount of time for which a project has been programmatically approved. A project period may consist of one or more budget periods. For the purposes of this notice, grant awards will be made for a one year budget period and project periods will be for up to three years.

Dated: August 3, 1992.

Robert G. Harmon,

Administrator.

Appendix I—Regional Office Staff

Region I: Rob Lawrence, Acting Director, Division of Health Services Delivery, DHHS—Region I, JFK Federal Building #1401, Boston, MA 02203

Region II: Ron Moss, Director, Division of Health Service Delivery, DHHS—Region II, JKJ Federal Building, 25 Federal Plaza, New York, NY 10278

Region III: Bruce Riegel, Director, Division of Health Services Delivery, DHHS—Region III, 3535 Market Street, Philadelphia, PA 19101

Region IV: Ms. Marlene Lockwood, Division of Health Services Delivery, DHHS—Region IV, 101 Marietta Tower, Atlanta, GA 30323

Region V: Caye Santiago, Director, Division of Health Services Delivery, DHHS—Region V, 105 West Adams Street, 17th floor, Chicago, IL 60603

Region VI: Fred Pintz, M.D., Director, Division of Health Services Delivery, DHHS—Region VI, 1200 Main Tower Building, Dallas, TX 75202

Region VII: Ray Maddox, Director, Division of Health Services Delivery, DHHS—Region VII, Federal Office Building, 601 East 12th Street, Kansas City, MO 64106

Region VIII: Barbara Bailey, Director, Division of Health Services Delivery, DHHS—Region VIII, Federal Office Building, 1961 Stout Street, Denver, CO 80294

Region IX: Irma Honda, Acting Director, Division of Health Services Delivery, DHHS—Region IX, 50 United Nations Plaza, San Francisco, CA 94102

Region X: Doug Woods, Director, Division of Health Services Delivery, DHHS—Region X, Blanchard Plaza, 2201 Sixth Avenue, Seattle, WA 98121

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Region VII: Ray Maddox, Director, Division of Health Services Delivery, DHHS—Region VII, Federal Office Building, 601 East 12th Street, Kansas City, MO 64106

Region/state/service area	Number of grants	Grant expiration date
Region I		
Connecticut: Avon, Bloomfield, Burlington, Canton, Farmington, Glastonbury, Granby, Hartford, Manchester, Newington, Rockville, Rocky Hill, Simsbury, Windsor, Wethersfield	1	01/31/93
Massachusetts:		
Lynn, Nahant, Swampscott, Barnstable County, North Dorchester, Mattapan, Roxbury, Holyoke	4	01/31/93
Boston	1	03/31/93
Maine:		
Southeast Washington County	1	12/31/92
Aroostook County, Northeast Washington County, Southeast Hancock, South Penobscot, Waldo Counties, Androscoggin, Aroostook, Kennebec, Washington Counties	4	03/31/93
York County, Franklin, Kennebec, Knox, Lincoln, Oxford, Somerset, Waldo Counties	2	05/31/93

Region/state/service area	Number of grants	Grant expiration date
New Hampshire: Rockingham County	1	05/31/93
Rhode Island:		
Northeast Providence County	1	01/31/93
Washington County, Fox Point, Olneyville, Smith Hill, South Side, West End	2	11/30/92
Region II		
New Jersey:		
Patterson, Cumberland County	2	12/31/92
Atlantic, Burlington, East Camden, Glouster, and Salem Counties	1	01/31/93
Trenton	1	03/31/93
Plainfield	1	05/31/93
New York:		
Southern Jefferson County, Northern Oswego County, Northern Genesee, Monroe, Orleans County, Greenburg, Mt. Pleasant, New Castle, Ossining, North Tarrytown, Valhalla, Southwest Bronx, Mt. Vernon, Yonkers, Buffalo, Rochester, Central Bronx, East Bronx, South Bronx, Southwest Bronx, Rochester	8	12/31/92
Beacon, Peekskill	1	01/31/93
Buffalo, Albany, Cohoes, Rensselaer, Troy, Watervliet, Syracuse	3	03/31/93
Greenburgh, White Plains, Newburgh	2	05/31/93
Chenango, Cortland, Madison, Brooklyn, Williamsburg	2	11/30/92
Puerto Rico:		
Florida	1	12/31/92
Ciales, Cidra	2	01/31/93
Lares, Santurce	2	03/31/93
Barceloneta, Loiza	2	03/31/93
Ponce	1	11/30/92
Virgin Islands: Frederiksted	1	05/31/93
Region III		
District of Columbia: District of Columbia	1	05/31/93
Delaware: Accomack (VA), Caroline (MD), Dorchester (MD), Kent (MD), Northhampton (VA), Queen Annes (MD), Somerset (MD), Sussex (VA), Talbot (MD), Wicomico (MD), Worcester (MD)	1	03/31/93
Maryland:		
Caroline County	1	12/31/92
Brooklyn, Cherry Hill, Curtis Bay, Lakeland, Morrell Park, Mt. Winans, Wagners Point, Westport	1	03/31/93
Dundalk, O'Donnell Heights	1	06/30/93
East and West Baltimore	1	11/30/92
Pennsylvania:		
Farrell, Mahoning Valley (OH), Sharon, Shenango, Bedford, Fulton, Huntington, Chester, Monroeville, Pittsburgh, Greene, Fayette, Washington, Westmoreland, Luzerne, Northern Schuylkill, Southern Wyoming, Philadelphia	7	01/31/93
Susquehanna, Wayne, Cameron, Potter, Southeast Lancaster, Harrisburg, Southeastern Greene, Southwestern Fayette	5	03/31/93
East Potter, South Steuben (NY), Tioga	1	05/31/93
Virginia:		
Brunswick, Dinwiddie	1	01/31/93
Southeast Newport News	1	11/30/92
West Virginia:		
Monroe County, McDowell County	2	01/31/93
Southern Boone, Raleigh, Wyoming, Berkeley, Clark (VA), Frederick (VA), Hampshire, Jefferson and Morgan Counties	2	03/31/93
Southeastern Hampshire, Eastern Hardy, Boone, Cabell, Kanawha, Lincoln, Northern Logan, Martin (KY), Northern Mingo, Putnam, Wayne, Mercer County	3	05/31/93
Eastern Fayette, Western Greenbrier, Meadow Bridge, Southern Nicholas, Quinwood, Rainelle, Summers	1	11/30/92
Region IV		
Alabama:		
Southern Montgomery, Wetumpka, Willow Springs, Autauga, Bibb, Chilton, Coosa, Elmore, Fayette, Lamar, Perry, Pickens, Walker	2	01/31/93
East and West Bullock, Macon, East and West Russell, Central and Southern Tallapoosa	1	03/31/93
Dade, Jackson, Madison	1	05/31/93
Butler, Conecuh, Covington, Athens, Dacatur, Huntsville, Mobile, Washington	3	11/30/92
Florida:		
Orlando, Sanford	1	12/31/92
Miami, Coral Gables, Florida City, Homestead, Perrine, Jefferson, Madison, Taylor, Lake, and Orange Counties	4	01/31/93
Coconut Grove, Coral Gables, South Miami, Franklin, Gulf, Wakulla	2	03/31/93
Columbia County, Lake City, St. Petersburg, Sarasota, Tampa, Gilchrist, Northern Levy	3	05/31/93
Pasco	1	11/30/92
Georgia:		
Decatur	1	12/31/92
Lamar, Pike, Plains, Stewart, Webster	2	01/31/93
Elbert, Madison, Oglethrope, Glascock, Taliaferro, Warren	2	03/31/93
Atkinson, Candler, Coffee, Crawford, Macon, Montgomery, Peach, Schley, Sumter, Tattnall, Taylor, Toombs, Wheeler, Atlanta, Howndes, Decatur, Morrow, Brooks, Cook, Crisp, Echols	2	05/31/93
Kentucky:		
Lexington, Floyd, Johnson, Magoffin, Pyke	2	01/31/93
Louisville	1	11/30/92
Mississippi		
Greene, Southern Wayne	1	01/31/93
Benton, Marshall, Tippah, Uni	1	03/31/93
Humphrey's, Madison, Yazoo, Clarke, Jasper, Wayne, Leake	2	05/31/93
Jackson City, Hinds, Issaquena, Sharkey, Warren, Southern Lawrence, Western Marion, Eastern Pike, and Walthall Counties, Northern Tangipahoa (LA), and Northern Washington (LA) Parishes, Bolivar, Sunflower, Washington	4	11/30/92
North Carolina:		
Duplin, Northern Pender, Eastern Sampson, Southern Wayne	1	12/31/92
West Charlotte	1	03/31/93

Region/state/service area	Number of grants	Grant expiration date
Caswell County	1	05/31/93
Vance and Warren Counties, Edgecombe, Green, Nash, Wilson, Beaufort, Pamlico, Raleigh	4	11/30/92
South Carolina:		
Cherokee, Clarendon, Dillon, Greenville, Lee, Oconee, Pickens, Spartanburg, Sumter, Union, Williamsburg	1	03/31/93
Western Chesterfield, Eastern Kershaw, Brunswick (NC), Horry, Beaufort, Hampton, Jasper	3	05/31/93
Tennessee:		
Meigs, Polk, Rhea, Dyer, Lake, Obion	2	01/31/93
West Hickman, North Lewis, Perry	1	03/31/93
Campbell, Scott, Fayette, Shelby Counties	2	05/31/93
Chattanooga	1	11/30/92
Region V		
Illinois:		
Henderson, Mercer, Warren	1	12/31/92
Englewood, West Englewood, New City	1	01/31/93
Franklin, Jackson, Johnson, Perry, Saline, Union, Williamson	1	03/31/93
Decatur, Humbolt Park, Logan Square, West Town	2	05/31/93
Urbana	1	11/30/92
Indiana: St. Joe	1	05/31/93
Michigan:		
Detroit, Clair, Crawford, Gladwin, Missaukee, Roscommon	2	12/31/92
Detroit, Alpena, Montmorency, Presque Isle, Kalamazoo	3	01/31/93
Grand Rapids, Beecher District, North Central Flint, North Kent	3	03/31/93
Lake, Manistee, Mason, Newaygo	1	11/30/92
Minnesota:		
Minneapolis, St. Paul	1	03/31/93
Central & South Koochiching, North Itaska, North St. Louis	1	05/31/93
Ohio:		
Cincinnati	1	12/31/92
Athens, Perry, Ross, Vinton, Belmont, Guernsey, Harrison, Monroe	2	01/31/93
Darke, Miami	1	03/31/93
Dorr, Parkside, Central West Toledo	1	11/30/92
Wisconsin:		
Southern Forest, Eastern Langlade, Western Marinette, Northern Oconto	1	01/31/93
Clark, Jackson, Marathon, Price, Rusk Taylor, Wood	1	05/31/93
Region VI		
Arkansas:		
Ashley, Chicot, Drew	1	01/31/93
Altheimer, College Station, Pine Bluff, Redfield, Monroe, South Prairie	2	05/31/93
Lee, Phillips, St. Francis	1	11/30/92
Louisiana:		
Catahoula, Concordia, and Franklin Parishes	1	12/31/92
Allen, Beauregard, East and West Carroll, Catahoula, Concordie, DeSoto, Jackson, Madison, Natchitoches, Red River, Sabine, Tensas, Vernon, Bienville, and Winn Parishes	1	01/31/93
Iberia, and St. Mary Parishes	2	05/31/93
New Mexico:		
Albuquerque, Los Lunas, Catron, Eddy McKinley, San Juan, San Miguel, Sandoval, Santa Fe, Taos, Torrance	2	12/31/92
Curry, Roosevelt	1	01/31/93
North Dona Ana, South Sierra, Cibola McKinley	2	03/31/93
Dona Ana, Santa Fe, Gaudalupe, Harding, Mora, Rio Arriba, San Miguel, Taos	3	05/31/93
Oklahoma:		
Northeast Oklahoma City	1	01/31/93
Tulsa	1	03/31/93
Texas:		
Brownsville, Port Isabel, Atascosa	2	01/31/93
Jasper, Newton, Sabine, San Augustine, Tyler	1	03/31/93
West Dallas, Angelina, Cherokee, Nacogdoches, Rusk, Sabine, San Augustine, Shelby, Kinney, Maverick, Val Verde, Durval, Jim Wells	4	05/31/93
Dallas, El Paso	2	11/30/92
Region VII		
Iowa: Scott, Rock Island, Waterloo	2	01/31/93
Missouri:		
St. Louis	1	01/31/93
Kansas City, Clark, Knox, Scotland, Dunklin, Mississippi, New Madrid, Pemiscot, Scott, Stoddard, Inner Kansas City, Adair	4	03/31/93
St. Louis	1	05/31/93
Nebraska: North & Northeast Omaha	1	01/31/93
Region VIII		
Colorado:		
Colorado Springs, Denver, Aurora, Bennett, Byers	3	12/31/92
Adams, Boulder	1	01/31/93
Boulder, Clear Creek, Gilpin, Pueblo, Rye	2	05/31/93
San Luis Valley	1	11/30/92
Montana:		
Big Horn, Carbon, Carter, Custer, Daniels, Dawson, Fallon, Garfield, McCone, Powder River, Prairie, Richland, Roosevelt, McKenzie (ND), Rosebud, Sheridan, Stillwater, Treasure Valley, Wibaux, Williams (ND), Yellowstone	2	01/31/93
Yellowstone	1	03/31/93
South Dakota:		
Northern Lincoln, Minnehaha	1	12/31/92

Region/state/service area	Number of grants	Grant expiration date
Aurora, Northeast Brule, East Buffalo, Jerauld, Sanborn	1	01/31/93
North & South Union	1	03/31/93
Hamlin, Kingsbury, Lake, Miner	1	11/30/92
Utah:		
Central Ogden	1	03/31/93
Emery, Grand	1	05/31/93
Wyoming: Big Horn, Fremont, Hot Springs, Park, Washakie	1	01/31/93
Region IX		
Arizona:		
Pima	1	01/31/93
Yuma, Northern Coconino, Santa Cruz	3	05/31/93
Maricopa	1	11/30/92
California:		
Bloomington, Colton, Fontana, Rialto, San Diego, Monterey	3	12/31/92
Fresno	1	01/31/93
Albany, Berkeley, Emeryville, East, North & West Oakland, Kern	2	03/31/93
Fountain Valley, Garden Grove, Orange, Santa Ana, Westminister, San Luis Obispo, Santa Barbara, Northern Mendocino	3	05/31/93
Greater East Los Angeles, Pico, Rivera, Sante Fe Springs, Los Angeles, Calaveras, San Joaquin, Eastern Solano, Yolo, Butte	4	11/30/92
Guam: Inarajan	1	03/31/93
Hawaii: Honokai Hale, Maili, Makaha, Makakilo, Nanakuli, Oahu, Waianae	1	01/31/93
Marshall Islands: Majuro	1	01/31/93
Nevada: Henderson, Las Vegas	1	03/31/93
Federated States of Micronesia: Pohnpei	1	12/31/92
Republic of Palau: Koror	1	12/31/92
Region X		
Alaska: Anchorage	1	05/31/93
Idaho:		
Gem, Payette, Malheur (OR), Washington, Blaine, Cassia, Gooding, Jerome, Lincoln, Minidoka, Twin Falls	2	01/31/93
Ada, Canyan, Gem, Owyhee, Payette	1	03/31/93
Oregon:		
Hood River, Klickitat (WA), Wasco	1	01/31/93
Klamath County	1	05/31/93
Salem, Gresham, Portland	2	11/30/92
Washington:		
Ferry, Pend Oreille, Sponkane, Stevens	1	01/31/93
Benton, Columbia, Morrow (OR), Umatilla (OR), Walla Walla, Yakima	1	03/31/93
Benton, Franklin, Grays Harbor, Jefferson, Pacific, Wahkiakum, Buckley, Carbonato, Dupont, Fife, Fircrest, Gig Harbor, Milton, Orting, Puyallup, Reston, Roy, Steilacoom, Tacoma, Wilkinson	3	05/31/93
Adams, Franklin, Grant	1	11/30/92

[FR Doc. 92-21715 Filed 9-9-92; 8:45 am]
BILLING CODE 4160-15-M

National Institutes of Health

National Advisory Council for Human Genome Research; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Council for Human Genome Research, National Center for Human Genome Research, September 20 and 21, 1992 in the Maryland Suites of the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD.

This meeting will be open to the public on September 21, 1992, from 8:30 a.m. to 10 a.m. to discuss administrative details or other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public law 92-463, the meeting will be closed to the public on September 20, 1992 from 7 p.m. to recess and on September 21, 1992, from 10 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Elke Jordan, Deputy Director, National Center for Human Genome Research, National Institutes of Health, Building 38A, Room 605, Bethesda, Maryland 20892, (301) 496-0844, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research.)

Dated: September 2, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-21798 Filed 9-9-92; 8:45 am]
BILLING CODE 4140-01-M

National Cancer Institute; Meeting of the Biometry and Epidemiology Contract Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, October 1-2, 1992, at the Executive Plaza North Building, Conference Room G, 6130 Executive Boulevard, Rockville, Maryland 20892.

This meeting will be open to the public on October 1 from 9 a.m. to 10 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on October 1 from 10 a..m. to recess and on October 2 from 9 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or

commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892, Tel. 301/496-5708, will provide a summary of the meeting and a roster of committee members upon request.

Dr. Harvey P. Stein, Scientific Review Administrator, Biometry and Epidemiology Contract Review Committee, 5333 Westbard Avenue, room 807, Bethesda, Maryland 20892, telephone 301/496-7030, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: September 2, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-21797 Filed 9-9-92; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meetings of Subcommittees B, C, and D of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee

Pursuant to Public Law 92-463, notice is hereby given of meetings of Subcommittees B, C, and D of the National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK).

These meetings will be open to the public to discuss administrative details at the beginning of the first session of the first day of the meetings. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion, and evaluation of individual research grant applications. Discussion of these applications could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winnie Martinez, Committee Management Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 31, room 9A19, Bethesda, Maryland 20892, 301-496-6917, will provide summaries of the meetings and rosters of the committee members upon request. Other information pertaining to the meetings can be obtained from the Scientific Review Administrators indicated.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee B

Scientific Review Administrator: Francisco O. Calvo, Westwood Building, room 605, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301-496-7697.

Dates of Meeting: October 22-23, 1992.

Place of Meeting: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Open: October 22, 5:30 p.m.—recess. October 23, 8 a.m.—8:15 a.m.

Closed: October 23, 8:15 a.m.—adjournment.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee C

Scientific Review Administrator: Daniel Matsumoto, Westwood Building, room 604, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301-496-8830.

Dates of Meeting: October 22-23, 1992.

Place of Meeting: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Open: October 22, 5:30 p.m.—recess. October 23, 8 a.m.—8:15 a.m.

Closed: October 23, 8:15 a.m.—adjournment.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee D.

Scientific Review Administrator: Ann A. Hagan, Westwood Building, room 604, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301-496-7841.

Dates of Meeting: October 22-23, 1992.

Place of Meeting: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Open: October 22, 5:30 p.m.—recess. October 23, 8:00 a.m.—8:15 a.m.

Closed: October 23, 8:15 a.m.—adjournment.

(Catalog of Federal Domestic Assistance Program No. 93.847-849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: September 2, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-21795 Filed 9-9-92; 8:45 am]

BILLING CODE 4140-01-M

National Institute of General Medical Sciences; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the committees of the National Institute of General Medical Sciences for November 1992.

These meetings will be open to the public to discuss administrative details relating to committee business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed thereafter in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion, and evaluation of individual research training grant and research center grant applications. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20892 (Telephone: 301-496-7301), will provide a summary of the meeting and a roster of committee members.

Substantive program information may be obtained from each scientific review administrator whose name, room number, and telephone number are listed below each committee.

Name of Committee: Genetic Basis of Disease Review Committee.

Scientific Review Administrator: Dr. Arthur Zachary, Room 9A14, Westwood Building, Telephone: 301-496-7125.

Dates of Meeting: November 2, 1992.

Place of Meeting: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Open: November 2, 8:30 a.m.-9:30 a.m.

Closed: November 2, 9:30 a.m.-adjournment.

Name of Committee: Cellular and Molecular Basis of Disease Review Committee.

Scientific Review Administrator: Dr. Carole Latker, Room 9A10, Westwood Building, Telephone: 301-496-7125.

Dates of Meeting: November 4-5, 1992.

Place of Meeting: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: November 4, 8:30 a.m.-9:30 a.m.

Closed: November 4, 9:30 a.m.-5 p.m., November 5, 8:30 a.m.-adjournment.

Name of Committee: Pharmacological Sciences Review Committee.

Scientific Review Administrator: Dr. Irene Glowinski, Room 9A10, Westwood Building, Telephone: 301–496–7125.

Dates of Meeting: November 6, 1992.

Place of Meeting: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: November 6, 8:30 a.m.–9:30 a.m.

Closed: November 6, 9:30 a.m.–adjournment.

Name of Committee: Minority Access to Research Careers Review Subcommittee.

Scientific Review Administrator: Dr. Richard Martinez, Room 9A18, Westwood Building, Telephone: 301–496–7585.

Dates of Meeting: November 9–10, 1992.

Place of Meeting: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Open: November 9, 8:30 a.m.–9:30 a.m.

Closed: November 9, 9:30 a.m.–5 p.m., November 10, 8:30 a.m.–adjournment.

Name of Committee: Minority Biomedical Research Support Review Subcommittee.

Scientific Review Administrator: Dr. Ernest Marquez, Room 9A13, Westwood Building, Telephone: 301–402–0635.

Dates of Meeting: November 23–24, 1992.

Place of Meeting: Building 31C, Conference Room 8, National Institutes of Health, Bethesda, Maryland 20892.

Open: November 23, 8:30 a.m.–9:30 a.m.

Closed: November 23, 9:30 a.m.–5 p.m., November 24, 8:30 a.m.–adjournment.

(Catalog of Federal Domestic Assistance Program No. 93.859, 93.862, 93.863, 93.880, National Institute of General Medical Sciences, National Institutes of Health.)

Dated: September 2, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–21794 Filed 9–9–92; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Meeting of the National Deafness and Other Communication Disorders Advisory Council and Its Research Subcommittee

Pursuant to Public Law 92–463, notice is hereby given to the meetings of the National Deafness and Other Communication Disorders Advisory Council and its Research Subcommittee on September 30-October 2, 1992, at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland. The meeting of the full Council will be held in Conference Room 6, Building 31C, and that of the subcommittee in Conference Room 7, Building 31C.

The meeting of the Research Subcommittee will be open to the public on September 30 from 2 p.m. until 3 p.m. for the discussion of policy issues. The meeting of the full Council will be open to the public on October 1 from 8:30 a.m. until approximately 3:30 p.m. for a report from the Institute Director and discussion of extramural policies and procedures at the National Institutes of Health and the National Institute on Deafness and Other Communication Disorders and on October 2 from 8:30 a.m. to approximately 9 a.m. for a report on extramural programs of the Division of Communication Sciences and Disorders.

In accordance with the provisions set forth in section 552b(c)(4) and 552(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the Research Subcommittee on September 30 will be closed to the public from 3 p.m. to adjournment. The meeting of the full Council will be closed to the public on October 1 from approximately 3:30 p.m. to recess and on October 2 from 9 a.m. until adjournment. The closed portions of the meeting will be for the review of reports of Board of Scientific Counselors, and the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council and Subcommittee meetings may be obtained from Dr. John C. Dalton, Executive Secretary, National Institute on Deafness and Other Communication Disorders, Executive Plaza South, Room 400B, National Institutes of Health, Bethesda, Maryland 20892, 301–496–8693. A summary of the meetings and rosters of the members may also be obtained from his office. Closed captioning will be available throughout the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communicative Disorders)

Dated: September 2, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–21799 9–9–92; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Meetings of the Board of Regents and Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on October 1–2, 1992, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland. The Subcommittees will meet on September 30 as follows:

The Extramural Programs Subcommittee, 5th-floor Conference Room, Building 38A, 2 to approximately 3:30 p.m., the Subcommittee on Pricing of NLM Services, Conference Room B, Building 38, 3 to approximately 4 p.m., and the Planning Subcommittee in Conference Room B, Building 38, 4 to approximately 5 p.m. The Extramural Programs Subcommittee will be closed to the public.

The meeting of the Board will be open to the public from 9 a.m. to approximately 4:30 p.m. on October 1 and from 9 a.m. to adjournment on October 2 for administrative reports and program discussions. Attendance will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4), 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the entire meeting of the Extramural Programs Subcommittee on September 30 will be closed to the public, and the regular Board meeting on October 1 will be closed from approximately 4:30 p.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301–496–6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health.)

Dated: September 2, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–21796 Filed 9–9–92; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Meeting of the Literature Selection Technical Review Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Literature Selection Technical Review Committee, National Library of Medicine on October 15–16, 1992,

convening at 9 a.m. on October 15 and at 8:30 a.m. on October 16 in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on October 15 will be open to the public from 9 a.m. to 10:30 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(9)(B), Title 5, U.S.C. Public Law 92–463, the meeting will be closed on October 15 from 10:30 a.m. to approximately 5 p.m. and on October 16 from 8:30 a.m. to adjournment for the review and discussion of individual journals as potential titles to be indexed by the National Library of Medicine. The presence of individuals associated with these publications could hinder fair and open discussion and evaluation of individual journals by the Committee members.

Mrs. Lois Ann Colaianni, Scientific Review Administrator of the Committee, and Associate Director, Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–6921, will provide a summary of the meeting, rosters of the committee members, and other information pertaining to the meeting.

Dated: September 2, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–21793 Filed 9–9–92; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the following study sections for September through October 1992, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one half hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7534 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each scientific review administrator, whose telephone number is provided. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the scientific review administrator to confirm the exact date, time and location. All times are A.M. unless otherwise specified.

Study section	September-October 1992 meetings	Time	Location
Allergy & Immunology, Mr. Howard M. Berman, Tel. 301–496–7380.	Oct. 19–21	8:30	Holiday Inn, Chevy Chase, MD.
Bacteriology & Mycology-1, Dr. Timothy J. Henry, Tel. 301–496–7340.	Oct. 21–23	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Bacteriology & Mycology-2, Dr. William Branche, Jr., Tel. 301–496–7682.	Oct. 28–30	8:30	Holiday Inn, Chevy Chase, MD.
Behavioral Medicine, Ms. Carol Campbell, Tel. 301–496–7109.	Sept. 30–Oct. 2	8:30	Holiday Inn, Chevy Chase, MD.
Biochemical Endocrinology, Dr. Michael Knecht, Tel. 301–496–7430.	Sept. 30–Oct. 2	8:30	Embassy Suites Hotel, Washington, DC.
Biochemistry, Dr. Adolphus P. Toliver, Tel. 301–496–7516	Oct. 28–30	8:00	Rosslyn Westpark Hotel, Arlington, VA.
Bio-Organic & Natural Products Chemistry, Dr. Harold Radtke, Tel. 301–496–8823.	Oct. 22–24	9:00	Holiday Inn, Georgetown, DC.
Biophysical Chemistry, Dr. John Beisler, Tel. 301–496–7070	Oct. 15–17	8:30	St. James Hotel, Washington, DC.
Bio-Psychology, Dr. A. Keith Murray, Tel. 301–496–7058	Sept. 30–Oct. 2	9:00	Omni Georgetown Hotel, Washington, DC
Cardovascular, Dr. Gordon L. Johnson, Tel. 301–496–7316	Oct. 19–21	8:00	Holiday Inn, Crowne Plaza, Rockville, MD.
Cardiovascular & Renal, Dr. Anthony Chung, Tel. 301–496–7901.	Oct. 8–9	8:30	Marriott Hotel, Pooks Hill, Bethesda, MD.
Cellular Biology and Physiology-1, Dr. Gerald Greenhouse, Tel. 301–402–2689.	Oct. 7–9	8:00	American Inn, Bethesda, MD.
Cellular Biology and Physiology-2, Dr. Gerhard Ehrenspeck, Tel. 301–402–2691.	Oct. 14–16	8:30	Holiday Inn, Bethesda, MD.
Chemical Pathology, Dr. Edmund Copeland, Tel. 301–496–7078.	Oct. 21–23	8:00	Holiday Inn, Chevy Chase, MD.
Diagnostic Radiology, Dr. Catharine Wingate, Tel. 301–496–7650.	Oct. 14–16	8:30	Hyatt Regency Hotel, Bethesda, MD.
Endocrinology, Dr. Harry Brodie,Tel. 301–496–7346	Oct. 14–16	9:00	Hyatt Regency Hotel, Bethesda, MD.
Epidemiology & Disease Control-1, Dr. Scott Osborne, Tel. 301–496–7246.	Oct. 14–16	8:30	Residence Inn Marriott, Bethesda, MD.
Epidemiology & Disease Control-2, Dr. H. M. Stiles, Tel. 301–496–7246.	Oct. 7–9	8:30	Embassy Suites Hotel, Alexandria, VA.
Experimental Cardiovascular Sciences, Dr. Richard Peabody, Tel. 301–496–7940.	Oct. 14–16	8:00	Residence Inn Marriott, Bethesda, MD.
Experimental Immunology, Dr. Calbert Laing, Tel. 301–496–7238.	Oct. 1–3	8:30	Don Cesar Hotel, Petersburg, FL.
Experimental Therapeutics-1, Dr. Philip Perkins, Tel. 301–496–7839.	Oct. 14–16	8:30	Holiday Inn, Chevy Chase, MD.
Experimental Therapeutics-2, Dr. Marcia Litwack, Tel. 301–496–8848.	Oct. 28–30	8:30	Holiday Inn, Chevy Chase, MD.
Experimental Virology, Dr. Garrett V. Keefer, Tel. 301–496–7474.	Oct. 19–21	8:30	NIH, room 8, Bldg., 31C, Bethesda, MD.

Study section	September-October 1992 meetings	Time	Location
General Medicine A-1, Dr. Harold Davidson, Tel. 301-496-7797.	Oct. 26-28	8:30	NIH, room 6, Bldg. 31C, Bethesda, MD.
General Medicine A-2, Dr. Mushtaq Khan, Tel. 301-496-7140.	Oct. 14-16	8:30	NIH, room 6, Bldg. 31C, Bethesda, MD.
General Medicine B, Dr. Daniel McDonald, Tel. 301-496-7730.	Oct. 18-20	8:00	Holiday Inn, Chevy Chase, MD.
Genetics, Dr. David Remondini, Tel. 301-496-7271	Oct. 15-17	9:00	NIH, room 10, Bldg. 31C, Bethesda, MD.
Genome, Dr. Cheryl Corsaro, Tel. 301-496-7886	Oct. 26-28	9:00	The Georgetown Inn, Georgetown, DC.
Hearing Research, Dr. Joseph Kimm, Tel. 301-496-7494	Oct. 5-7	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Hematology-1, Dr. Clark Lum, Tel. 301-496-7508	Oct. 22-24	8:00	Hyatt Regency Hotel, Bethesda, MD.
Hematology-2, Dr. Jerrold Fried, Tel. 301-496-7508	Oct. 28-30	8:30	Holiday Inn, Georgetown, DC.
Human Development & Aging-1, Dr. Teresa Levitin, Tel. 301-496-7025.	Oct. 28-30	9:00	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Human Development & Aging-2, Dr. Peggy McCardle, Tel. 301-496-7640.	Oct. 21-23	8:30	Holiday Inn, Chevy Chase, MD.
Human Development & Aging-3, Dr. Anita Sostek, Tel. 301-496-8814.	Oct. 19-21	9:00	Embassy Suites Hotel, Chevy Chase Pavilion, Washington DC.
Human Embryology & Development-1, Dr. Arthur Hoversland, Tel. 301-496-7597.	Oct. 22-23	8:00	Holiday Inn, Bethesda, MD.
Immunobiology, Dr. Bruce Maurer, Tel. 301-496-7780	Oct. 14-16	8:30	Holiday Inn, Georgetown, DC.
Immunological Sciences, Dr. Anita Corman Weinblatt, Tel. 301-496-7179.	Oct. 14-16	8:30	Holiday Inn, Chevy Chase, MD.
Lung Biology and Pathology, Dr. Anne Clark, Tel. 301-496-4673.	Oct. 14-16	8:00	Holiday Inn, Chevy Chase, MD.
Mammalian Genetics, Dr. Jerry Roberts, Tel. 301-496-1462	Oct. 22-24	8:30	Holiday Inn, Bethesda, MD.
Medical Biochemistry, Dr. Alexander Liacouras, Tel. 301-496-7517.	Oct. 22-24	8:30	Holiday Inn, Chevy Chase, MD.
Medicinal Chemistry, Dr. Ronald Dubois, Tel. 301-496-7107.	Oct. 14-16	8:30	Holiday Inn, Georgetown, DC.
Metabolic Pathology, Dr. Marcelina Powers, Tel. 301-496-5251.	Oct. 28-30	8:00	Georgetown Inn, Georgetown DC.
Metabolism, Dr. Krish Krishnan, Tel. 301-496-7091	Oct. 28-30	8:00	Holiday Inn, Georgetown, DC.
Metallobiochemistry, Dr. Edward Zapolski, Tel. 301-496-7733.	Oct. 22-24	8:30	Omni Georgetown Hotel, Washington, DC.
Microbial Physiology & Genetics-1, Dr. Martin Slater, Tel. 301-496-7183.	Oct. 28-30	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington DC.
Microbial Physiology & Genetics-2, Dr. Gerald Liddel, Tel. 301-496-7130.	Oct. 21-23	8:30	Holiday Inn, Georgetown, DC.
Molecular & Cellular Biophysics, Dr. Nancy Lamontagne, Tel. 301-496-7060.	Oct. 22-24	8:00	Holiday Inn, Chevy Chase, MD.
Molecular Biology, Dr. Robert Su, Tel. 301-496-7830	Oct. 15-17	8:00	Omni Georgetown Hotel, Washington, DC.
Molecular Cytology, Dr. Ramesh Nayak, Tel. 301-496-7149	Oct. 1-2	8:00	Holiday Inn, Chevy Chase, MD.
Neurological Sciences-1, Dr. Andrew Mariani, Tel. 301-496-7279.	Oct. 14-16	8:00	Holiday Inn, Bethesda, MD.
Neurological Sciences-2, Dr. Stephen Gobel, Tel. 301-496-8808.	Oct. 13-15	8:00	Holiday Inn, Chevy Chase, MD.
Neurology A, Dr. Joe Marwah, Tel. 301-496-7095	Oct. 22-24	8:00	Sheraton Hotel, Los Angeles Area, San Pedro, CA.
Neurology B-1, Dr. Samuel Rawlings, Tel. 301-496-7846	Oct. 13-15	8:00	Hotel Washington, Washington, DC.
Neurology B-2, Dr. Herman Teitelbaum, Tel. 301-496-7422	Oct. 22-24	8:30	San Pedro Sheraton Hotel, Los Angeles, CA.
Neurology C, Dr. Kenneth Newrock, Tel. 301-496-5591	Oct. 14-17	8:30	Omni Georgetown Hotel, Washington, DC.
Nursing Research, Dr. Gertrude McFarland, Tel. 301-496-0558.	Oct. 20-22	8:30	Holiday Inn Crown Plaza, Rockville, MD.
Nutrition, Dr. Sooja Kim, Tel. 301-496-7178	Oct. 7-9	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Oral Biology & Medicine-1, Dr. Larry Pinkus, Tel. 301-496-7818.	Sept. 30-Oct. 2	8:30	Holiday Inn, Chevy Chase, MD.
Oral Biology & Medicine-2, Dr. Larry Pinkus, Tel. 301-496-7818.	Oct. 13-15	8:30	Holiday Inn, Chevy Chase, MD.
Orthopedics & Musculoskeletal, Ms. Ileen Stewart, Tel. 301-496-7581.	Oct. 26-28	8:30	Wyndham Hotel, San Antonio, TX.
Pathobiochemistry, Dr. Zakir Bengali, Tel. 301-496-7820	Oct. 21-23	8:30	Holiday Inn, Chevy Chase, MD.
Pathology A, Dr. Jaswant Bhorjee, Tel. 301-496-7305	Oct. 13-16	7:00 p.m.	Holiday Inn Crowne Plaza, Rockville, MD.
Pathology B, Dr. Martin Padarathsingh, Tel. 301-496-7244	Oct. 14-16	7:00 p.m.	Holiday Inn, Georgetown, DC.
Pharmacology, Dr. Joseph Kaiser, Tel. 301-496-7408	Oct. 21-23	8:30	American Inn, Bethesda, MD.
Physical Biochemistry, Dr. Gopa Rakhit, Tel. 301-496-7120	Oct. 19-21	8:30	Holiday Inn Crowne Plaza, Rockville, MD.
Physiological Chemistry, Dr. Jerry Critz, Tel. 301-496-7837	Oct. 22-24	8:30	Holiday Inn, Bethesda, MD.
Physiology, Dr. Michael A. Lang, Tel. 301-496-7878	Oct. 14-16	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Radiation, Dr. Paul Strudler, Tel. 301-496-7073	Oct. 19-21	8:00	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Reproductive Biology, Dr. Dharam Dhindsa, Tel. 301-496-7318.	Sept. 30-Oct. 2	8:00	Holiday Inn, Bethesda, MD.
Reproductive Endocrinology, Dr. Abubakar A. Shaikh, Tel. 301-496-8857.	Oct. 5-7	8:00	Holiday Inn, Chevy Chase, MD.
Respiratory & Applied Physiology, Dr. Everett Sinnett, Tel. 301-496-7320.	Oct. 19-21	8:30	Holiday Inn, Chevy Chase, MD.
Safety & Occupational Health, Dr. Gopal Sharma, Tel. 301-496-6723.	Oct. 14-16	8:00	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Sensory Disorders & Language, Dr. Jane Hu, Tel. 301-496-7605.	Oct. 21-23	8:00	Holiday inn Capitol Hill, Washington, DC.

Study section	September-October 1992 meetings	Time	Location
Social Sciences & Population, Dr. Robert Weller, Tel. 301-496-7906.	Oct. 8-10	9:00	Holiday Inn, Chevy Chase, MD.
Surgery & Bioengineering, Dr. Paul F. Parakkal, Tel. 301-496-7506.	Oct. 26-27	8:00	Holiday Inn, Chevy Chase, MD.
Surgery, Anesthesiology & Trauma, Dr. Keith Kraner, Tel. 301-496-7771.	Oct. 21-23	2:00 p.m.	Holiday Inn, Bethesda, MD.
Toxicology-1, Dr. Alfred Marozzi, Tel. 301-496-7570	Oct. 28-30	8:00	American Inn, Bethesda, MD.
Toxicology-2, Dr. Alfred Marozzi, Tel. 301-496-7570	Oct. 14-16	8:00	American Inn, Bethesda, MD.
Tropical Medicine & Parasitology, Dr. Jean Hickman, Tel. 301-496-1190.	Oct. 14-16	8:30	Ramada Inn, Bethesda, MD.
Virology, Dr. Rita Anand, Tel. 301-496-7605	Oct. 14-16	8:30	Holiday Inn, Bethesda, MD.
Visual Sciences A, Dr. Anita Suran, Tel. 301-496-7000	Oct. 28-30	8:00	Holiday Inn, Bethesda, MD.
Visual Sciences B, Dr. Leonard Jakubzak, Tel. 301-496-7251.	Oct. 7-9	8:30	Omni Georgetown Hotel, Washington, DC.
Visual Sciences C, Dr. Samuel Rawlings, Tel. 301-496-7795.	Oct. 14-16	8:00	The Latham Hotel, Georgetown, DC

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 2, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-21792 Filed 9-9-92; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-680-00-4130-02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004-xxxx), Washington, DC 20503, telephone 202-395-7340.

Title: Occupancy and Use under the Mining Laws (43 CFR 3715).

OMB approval number: (not yet assigned).

Abstract: The Bureau of Land Management is proposing a new rule at 43 CFR part 3715 sets out the restrictions on use and occupancy of unpatented mining claims and mill sites on Federal lands and to provide field managers with the tools necessary to manage occupancy and use. The proposed rule would define those activities that are related to prospecting, mining, or processing operations and uses reasonably incident thereto. The rule would establish conditions for determining whether these criteria are met, procedures for initiation of occupancy, standards for the use of occupancy, prohibited acts, procedures for inspection and enforcement, and procedures for recognizing and managing existing occupancies. It would also provide for penalties and appeals procedures. The rules only apply to public land under the administration of the Bureau of Land Management.

Bureau Form Number: None.

Frequency: Once.

Description of respondents: Respondents may range from an individual to multi-national corporations.

Estimated completion time: 2.0 hours.

Annual responses: 125.

Annual burden hours: 250.

Bureau Clearance Officer (Alternate): Gerri Jenkins, 202-653-8853.

Adam A. Sokoloski,

Deputy Assistant Director for Energy and Mineral Resources.

[FR Doc. 92-21828 Filed 9-9-92; 8:45 am]

BILLING CODE 4130-84-M

[OR-020-4410-08-G2-418]

Intent To Prepare an Amendment to the Andrews Management Framework Plan, Harney County, Oregon

AGENCY: Burns District, Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an amendment to the Andrews Management Framework Plan and the announcement of (i) a scoping period during which written comments will be accepted and (ii) three public scoping meetings during which oral statements will be accepted.

SUMMARY: In accordance with 43 CFR 1610.2(c), notice is given that the Burns District intends to prepare an amendment to the Andrews Management Framework Plan. The first issue addresses keeping open the portion of the Steens Mountain Loop Road from four miles east of Blitzen Crossing (T. 33 S., R. 32-¾ E., Section 34, SW¼NW¼) to the Big Indian Scenic View (T. 33 S., R. 33 E., Section 14, SW¼SE¼). The existing land use plan called for closing of this section of road. The second issue would address what level of road reconstruction and maintenance is appropriate on the Loop Road, including access to existing and proposed recreation and interpretive sites. A third issue would address whether the Loop Road should remain closed to recreational use in the winter. The subject area is located in southeastern Oregon, in the south central portion of Harney County, between 60 and 80 miles south of Burns, Oregon.

Impacts to the environment from the following proposed actions would be analyzed. The Steens Mountain Loop Road would be reconstructed, primarily within the presently existing area of disturbance, surfaced with gravel and some form of stabilizing material applied to hold the gravel in place, and the road maintained. Several potential gravel sources would be investigated. Presently existing access roads to campgrounds, administrative sites, and overlooks would be upgraded to provide for passenger vehicles. Several new campground sites would be considered along the southern portion of the Loop Road, and evaluated in all but the No Action alternative. A small parking lot and a staging area would be proposed on the recently acquired Wildhorse property for hikers entering Wildhorse Canyon.

SUPPLEMENTARY INFORMATION: Disciplines to be represented on the interdisciplinary team preparing the plan amendment and environmental assessment are: Recreation, wilderness, cultural, range management, threatened and endangered plants and animals, wildlife and fisheries, watershed, road engineering, realty, and land use planning.

More detailed information on planning criteria, issues and preliminary management alternatives is available at the Burns District Office and has also been mailed to known interested parties. The comment period on preliminary issues and planning criteria for the plan amendment and associated environmental assessment will close October 30, 1992. Other public participation activities will include a 45-day review of the proposed plan amendment and environmental analysis and public meetings to receive comments and answer questions. Planning documents will be available for inspection at the Burns District Office during normal working hours.

Public Meetings: The agency will hold three public meetings for the receipt of oral statements regarding the scope of the Management Framework Plan amendment. The first meeting will be held on September 16, 1992 in the Harney County Museum Club Room in Burns, Oregon. Successive meetings will be held on September 17, 1992 at the Riverhouse Motor Inn in Bend, Oregon and on September 18, 1992 in the school at Frenchglen, Oregon. All public meetings will begin at 7 p.m., local time.

ADDRESSES: Written comments regarding the scope of the Management Framework Plan amendment would be mailed to Glenn T. Patterson, Andrews Resource Area Manager, Bureau of Land Management, HC 74, 12533 Highway 20 West Hines, Oregon 97738.

FOR FURTHER INFORMATION CONTACT: Detailed information, including proposed scoping issues, is available from Glenn T. Patterson, Area Manager or Steve Anderson, Steens Project Manager at the above address, or telephone 503–573–5241.

Dated: August 24, 1992.

Michael T. Green,

District Manager.

[FR Doc. 92–21739 Filed 9–9–92; 8:45 am]

BILLING CODE 4310–33–M

[UT–020–02–4212–14; U–68296]

Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, sale of public lands in Summit County, Utah.

SUMMARY: The Bureau of Land Management proposes the sale of approximately .7 acres of land in Summit County to United Park City Mines Company. This notice provides a public comment period and segregates the lands described from surface entry and mining under the public land laws including the United States mining laws.

DATES: Comments must be received by October 26, 1992.

ADDRESSES: Comments should be sent to the District Manager, Salt Lake District BLM, 2370 South 2300 West, Salt Lake City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: Janice MaChipiness, BLM Salt Lake District Office, (801) 977–4300.

SUPPLEMENTARY INFORMATION: The following described lands have been examined and found suitable for disposal under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than fair market value. The lands will not be offered for sale until at least 60 days after the date of this notice. The lands described will include all public lands within the following legal descriptions:

Salt Lake Meridian

T. 2 S., R. 4 E.,
Sec. 10, S½NE¼
Sec. 11, N½NW¼SW¼.

The area described contains approximately .7 acres in Summit County.

The appraised fair market value of the three tracts is $1,500. The above described lands will be sold to dispose of lands which are isolated and uneconomical to manage. The sale is consistent with the Bureau's planning system and the public interest will be served by offering these lands for sale.

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

The described lands will be sold at 10 a.m. on November 6, 1992, without competitive bidding at the above identified address to United Park City Mines Company. The appraised value as shown must be received by the Salt Lake District Office at the date and time of the sale. Payment may be made by the principal or a duly qualified agent. Payment shall be by certified check, money order, bank draft or cashier's check made payable to the Department of the Interior, BLM.

At the date of and prior to the sale of the lands, the Untied Park City Mines Company shall relinquish to the United States all interest and rights to the United Park Fraction No. 11, United Park Fraction No. 12 and United Park Fraction No. 13, UMC numbers 59470, 62110, and 59471, respectively.

The terms and conditions applicable to the sale are:

(1) The patent will contain a reservation for ditches and canals and be subject to all valid existing rights.

(2) All minerals will be reserved to the United States including the right of ingress and egress for mineral development.

Notice is hereby given that an opportunity for the public to comment is given within the comment period identified above. Any adverse comments will be evaluated by the District Manager who may modify or vacate this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: August 19, 1992.

Deane H. Zeller,

District Manager.

[FR Doc. 92–21679 Filed 9–9–92; 8:45 am]

BILLING CODE 4310–DQ–M

[CA–066–4331–12]

Restricted Use Order; Palm Springs-South Coast Resource Area, Riverside County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Prohibits discharge of firearms, except for the lawful taking of game, upon or within public lands in vicinity of Hayfield Springs.

SUMMARY: The area in and around Hayfield Spring has seen increased use in the past few years with some of the activity centered around indiscriminate and/or target shooting. Since the backdrop for such shooting contains prehistoric rock art, it is deemed necessary to restrict shooting.

The Restricted Use Area encompasses all of the public lands within the east half of T. 5 S., R. 13 E., SBM, situated north of a line which parallels and is 100 feet to the south of the centerline of the graded electrical transmission line access road and situated south of the 2,200 foot elevation line. This area is approximately 1,600 acres in size and comprises the southern face of the Eagle Mountains located due east of the Julian

Hinds Pumping Station and north of an electrical transmission line running in an east-west direction.

EFFECTIVE DATE: This Restricted Use Order is effective October 1, 1992 and will remain in effect for a period of four (4) years. At the end of the four years an evaluation of the Order's effectiveness and continued need shall be completed.

FOR FURTHER INFORMATION CONTACT: Michael Mitchell, Archaeologist, Palm Springs-South Coast Resource Area, 63-500 Garnet Ave., North Palm Springs, CA 92258-2000, (619) 251-0812.

SUPPLEMENTARY INFORMATION: Authority for this Restricted Use Order found in 43 CFR 8364.1. Violation of this closure is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Resource monitoring over the last several years has shown that indiscriminate shooting and target practice use has caused irreparable damage to irreplaceable resources. Individuals duly licensed and hunting for game in accordance with State regulations and hunting rules are exempt from this Order.

Dated: August 28, 1992.

Russell L. Kaldenberg,

Area Manager.

[FR Doc. 92-21735 Filed 9-9-92; 8:45 am]

BILLING CODE 4310-40-M

Bureau of Reclamation

Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs (Operating Criteria)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of proposed decision.

SUMMARY: The purpose of this action is to provide public notice that the Secretary of the Interior (Secretary) proposes no change to the existing Operating Criteria as a result of the current review process. The current review has been conducted as a public process including the formal consultation with representatives of the Governors of the seven Colorado River Basin States (Basin States). The results of the Bureau of Reclamation's (Reclamation) review indicate that modification of the Operating Criteria is not justified at the present time.

DATES: All written comments relevant to this proposed decision received by October 13, 1992 will be considered.

ADDRESSES: Interested parties should send comments to: Regional Director, Lower Colorado Region, Bureau of Reclamation, PO Box 61470, Boulder City, Nevada 89006-1470, Attention: Ms. Mary Webb, LC-153A.

FOR FURTHER INFORMATION CONTACT: Questions should be directed to Mr. Bruce Moore at 801-524-5415.

SUPPLEMENTARY INFORMATION: The public review process began with **Federal Register** notice 56 FR 534, January 7, 1991, announcing the review of the Operating Criteria and inviting comments during the 60 days following the notice. On January 15, 1991, over 250 letters enclosing a copy of the **Federal Register** notice and the Operating Criteria were sent to all known and anticipated interested parties inviting their review and comment. In response to requests, an additional 30-day comment period was announced in **Federal Register** 56 FR 14273, April 18, 1991.

Comments from the two **Federal Register** notices were received from 32 respondents. The comments were reviewed by Reclamation for identification and analysis of the issues. A public meeting was held on November 19, 1991, to discuss the identified issues and analyses. All those on the original mailing list were invited to this public meeting along with any others who had expressed interest. All of the 32 respondents and all who attended the meeting were provided with a document containing copies of all comments which had been received plus the identified issues and analyses. The analyses of the issues were revised to reflect information resulting from the public meeting. As required by Public Law (Pub. L.) 90-537, a formal consultation meeting with the designated Governors' representatives of the Basin States was held on March 24, 1992, to discuss the results of the review. This consultation meeting was open to the public for observation, and all on the original mailing list plus subsequent additions were notified of the meeting and invited. Immediately after the formal consultation, the meeting was extended for questions and comments from the general public.

Following analysis of comments received as a result of this notice, the National Environmental Policy Act (NEPA) will be applied to the Secretary's final decision. Following application of the NEPA process, the final decision will be published in the **Federal Register**.

Background

The Operating Criteria, promulgated pursuant to section 602 of Public Law 90-537 (U.S.C. 1552), were published in the **Federal Register** on June 10, 1970. The Operating Criteria provide for the coordinated long-range operation of the reservoirs constructed and operated under the authority of the Colorado River Storage Project Act, the Boulder Canyon Project Act, and the Boulder Canyon Project Adjustment Act for the purposes of complying with and carrying out the provisions of the Colorado River Compact (Compact), the Upper Colorado River Basin Compact, and the Mexican Water Treaty. The Operating Criteria provide that the Secretary will sponsor a formal review of the Operating Criteria at least every 5 years, with participation by such Basin State representatives as each Governor may designate and such other parties and agencies as the Secretary may deem appropriate. Public Law 90-537 allows the Secretary, as a result of actual operating experiences or unforeseen circumstances, to modify the Operating Criteria to better achieve their specified statutory purposes after consulting with the representatives of the Basin States.

In both 1975 and 1980, after consulting with the Basin States and others, the Secretary determined that there was not a need for a formal review. Review of the Operating Criteria in 1985 resulted in no changes. That review was conducted informally following a meeting among representatives of the Basin States (designated by the respective Governors) and Reclamation. The Secretary concluded that outstanding issues concerning the operation of the reservoir system and the Operating Criteria could be resolved without the necessity of a formal review of the Operating Criteria. The representatives of the Basin States were invited to participate in a technical work group with Reclamation to identify the extent of operational flexibility consistent with the Operating Criteria and to seek a consensus in the procedures used to formulate the Annual Operating Plan (AOP) for the following several years until the Basin States demands were more fully developed. Because the long-range operation of the Colorado River reservoirs is important to many agencies and individuals, this current review has involved the general public as well as a wider range of agencies and organizations.

The scope of this review has been consistent with the statutory purposes of the Operating Criteria, which are "to comply with and carry out the provisions of the Colorado River Compact and the Mexican Water Treaty." Long-range operations generally refers to the planning of reservoir operations over the next 5 to 20 years, as opposed to the AOP, which details reservoir operations for the next

operating year. When the flows of the Colorado River are augmented, as contemplated in section 602 of Public Law 90–537, the Operating Criteria will likely be revised.

Synopsis of Review Results

Many of the issues raised during the review are more properly dealt with during the development of the AOP. These include navigation, recognition of project purposes, minimizing spills, river conditions from Hoover Dam to Mexico, operations at Glen Canyon Dam, factors for determining 602(a) storage, rigorous application of the Operating Criteria, and storage equalization between Lakes Powell and Mead. The Operating Criteria were purposely designed to be flexible so that during the development of the AOP variations in weather patterns and changing demands for water use can be accommodated. The process for developing the AOP is open to the public and interested parties. Special studies that address some of the issues raised during the review of the Operating Criteria will be conducted during development of future AOP's.

Some issues such as short-term navigation concerns or specific issues relating to river conditions can often be handled on a case-by-case basis. Those with such concerns are invited to contact Reclamation so a cooperative solution can be worked out.

The minimum objective release from Lake Powell was carefully considered. Impacts of changing this parameter may be considerable and range from impacts on the levels in Lakes Powell and Mead to impacts on flows in the Grand Canyon. Insufficient data exist concerning these impacts and any change in the minimum objective releases a thorough analysis of the impacts would be premature. Studies are proposed to examine the combined effects of objective minimum releases, 602(a) storage determinations, and storage equalization between Lakes Powell and Mead. The decision on whether or not to change the Operating Criteria is subject to NEPA and appropriate compliance will be accomplished. It is not deemed appropriate to combine this process with the Glen Canyon Dam Environmental Impact Statement (GCDEIS) nor to delay this review and decision on the Operating Criteria until the GCDEIS is completed. With respect to the issues raised by the Indian Tribes, they are assured of their right to participate in reviews of the Operating Criteria and in the AOP development process.

Based on the results of the review and the analysis of public comments, it is proposed that the Operating Criteria not be modified at this time.

Analysis of Issues

Issue 1: Whether the Operating Criteria should include keeping the river navigable from Lake Mead Up to the Grand Canyon and below Hoover Dam, whether navigation should take precedence over power in determining dam releases, and whether river management should conform to the priorities in the Decree in *Arizona* v. *California* (Decree).

Analysis: Water releases by Reclamation from Hoover Dam on a monthly basis are normally controlled by water needs downstream (including reservoir regulation) or by flood control regulations if conditions require. Within the constraints imposed by water demands, daily and hourly releases are controlled by power demands and scheduling. Article II of the Decree lists river regulations, improvement of navigation, and flood control as the first priority uses of Hoover Dam and Lake Mead. However, the Compact states in Article IV that navigation shall be subservient to water supply and power. The Decree (Article VIII) also states that it (the Decree) shall not affect any issue of interpretation of the Compact.

It is the Department of the Interior's (Interior) position (which is supported by the findings in *Laughlin River Tours* v. *United States)* that the dams and reservoirs have already greatly improved navigation over the natural conditions and the operating in accordance with the Decree does not require maximizing the first priority elements to the great detriment of the other priorities. The Operating Criteria comport with the statute, the Compact, and the Decree for operating Hoover Dam and the other dams on the lower Colorado River.

Navigability of the river upstream of Lake Mead is dependent on releases from Lake Powell. Because the Decree deals with storage and release of water only with respect to Lower Basin reservoirs, it affords no priority to navigation on the river upstream of Lake Mead. The Operating Criteria do not specifically address priorities of purposes. Specific concerns of balancing priorities should be addressed during development of the AOP. The Operating Criteria need no changes with respect to priorities of purposes.

Issue 2: Whether the minimum objective release stated in the Operating Criteria should be changed.

Analysis: Article II (2) of the Operating Criteria states that "* * * the objective shall be to maintain a minimum release of water from Lake Powell of 8.23 million acre–feet * * *." The Operating Criteria make no explicit provisions for annual releases of less than 8.23 million acre-feet (MAF). There are conditions which prohibit annual releases greater than 8.23 MAF. They occur when the forecast for September 30 shows that either:

1. The Upper Basin storage will be less than 602(a) storage.

2. Lake Powell active storage will be less than the active storage of Lake Mead.

However, releases from Lake Powell greater than 8.23 MAF are made, if in the plan of operations, the forecast of September 30 shows that Upper Basin active storage will be greater than the quantity of 602(a) storage, in order to accomplish any or all of the following objectives:

1. If such releases can reasonably be applied in the lower division states to the uses specified in Article III(e) of the Compact and provided that active storage in Lake Powell is not less than active storage in Lake Mead.

2. To equalize active storage between Lakes Powell and Mead.

3. To avoid anticipated spills from Lake Powell.

The Compact requires that the Upper Division States shall not deplete the flow at Lee Ferry below an aggregate of 75 MAF for any period of 10 consecutive years. The principal purpose of the Operating Criteria is to make provision for the storage of water in Storage Units of the Colorado River Storage Project and Lake Mead and the release of water therefrom in accordance with Section 602 of the Colorado River Basin Project Act (Pub. L. 90–537). The Operating Criteria as recommended by the Secretary represent a compromise between Upper and Lower Basin positions on water use and delivery .

The application of the minimum release objective has several implications, including: (1) A lower Lake Powell storage volume during drought periods and a more stable Lake Mead storage volume, (2) a more consistent release regime through the Grand Canyon, and (3) a more consistent base for marketing the energy and capacity from the Glen Canyon Dam powerplant. The resulting releases have less variability than either the predam flows or the flows that would result from applying the delivery requirements contained in Articles III(c) and (d) of the Compact.

The Upper Division States object to the minimum release objective of 8.23 MAF per year and to the equalization provisions of the Operating Criteria. However, those states did not object to

the use of those provisions in the Operating Criteria at the present time. There are complicated and extensive impacts both negative and positive that could result from a change in the current minimum objective release of 8.23 MAF from Glen Canyon Dam including conditions such as storage levels in Lakes Powell and Mead, maximum and minimum streamflow levels, and the frequency of spills. The exact nature of these effects and their relationship to other parts of the Operating Criteria are currently unknown. Therefore, the minimum release provisions of the Operating Criteria should not been changed at this time. A comprehensive investigation is needed to determine the combined effects of possible changes to the Operating Criteria. These would include changes to minimum annual releases, the determination of 602(a) storage, and storage equalization between Lakes Powell and Mead.

Issue 3: Whether operations should give consideration to all listed project purposes and whether appropriate priorities between purposes should be reflected.

Analysis: Principal documents where project purposes are listed are the Operating Criteria, Colorado River Basin Project Act, Colorado River Storage Project Act, and Boulder Canyon Project Act.

The Operating Criteria (June 10, 1970), address project purposes as follows:

> The plan of operation * * * shall reflect appropriate consideration of the uses of the reservoirs for all purposes including flood control, river regulation, beneficial consumptive uses, power production, water quality control, recreation, enhancement of fish and wildlife, and other environmental factors.

The documents comprising the "Law of the River" do require consideration of all project purposes when making decisions on operation of the Colorado River system. In the development of each AOP, consideration must be given to all project purposes delineated in each specific facility's authorizing legislation. Modification of the long-term Operating Criteria is not necessary to provide such consideration. There is sufficient flexibility within the current Operating Criteria to give appropriate consideration to all project purposes.

Issue 4: Whether the Operating Criteria or AOP should include minimizing spills including minimizing high flows and flood control releases, whether full pool level should be identified in the Operating Criteria, and whether the probability of spills at Glen Canyon Dam should be reduced by removing the 602(a) storage requirement that prevents releases made to avoid anticipated spills.

Analysis: This issue relates to the monthly and annual operations of Glen Canyon Dam that are scheduled to avoid "spills," these being defined as releases in excess of those which can be utilized for project purposes. Reference to such releases is made in Public Law 90–537, Section 602(a)(3), and in the Operating Criteria, Sections II[3][c] and II[4]. Examples of such excess releases include powerplant bypasses and water released in excess of consumptive use requirements downstream of Lake Powell.

Both Public Law 90–537 and the existing Operating Criteria contain language directing that the operation of the Colorado River system reservoirs "* * * avoid anticipated spills from Lake Powell." The operation of all of the Colorado River reservoirs is forecast-based and includes mandatory flood control restrictions in the operation of Hoover Dam consistent with flood control as one of the purposes of the project. At each point during the year-round forecast period (typically the first of each month from January through July) evaluations of the current inflow forecast are made and the scheduled releases are adjusted in order to avoid spills from Glen Canyon Dam (while attempting to maximize storage available for future use). "Anticipated spills" have been interpreted as being those that are expected as a result of forecasted inflow.

The Operating Criteria are purposely general in many areas to provide the flexibility required to accommodate varying hydrologic conditions. To reduce the frequency of spills, operations have been implemented which include a combination of scheduling higher winter releases and "targeting" a full reservoir about 500,000 acre-feet lower than full capacity (as a buffer) until the peak runoff has clearly passed. Because the reservoir can still be filled after any danger of spills has passed, conservation storage is not affected.

The Operating Criteria are general enough to allow such adjustments to be part of the AOP development process. The AOP is developed annually and the current reservoir conditions, all project requirements, the probability of inflows, and alternative release strategies are all considered in a public forum.

The 602(a) storage requirement must be retained in the Operating Criteria because it is statutorily mandated. Furthermore, the quantification of the 602(a) storage level currently has no effect on spills from Glen Canyon Dam, although it may at some future time when Upper Basin uses are more fully developed.

The Operating Criteria are, and should remain, flexible enough to accommodate wide variations in hydrologic conditions, and therefore, need not be modified to accommodate avoidance of spills. Expected reservoir levels and risk of spills will be addressed during preparation of each AOP. Sufficient flexibility exists in the current Operating Criteria to allow development of AOP's with desired risks of spill.

Issue 5: What should be included in the GCDEIS and whether NEPA compliance for the current review of the Operating Criteria will be combined with the GCDEIS.

Analysis: The GCDEIS is a NEPA effort currently underway to assess alternative operations at Glen Canyon Dam.

Those issues which are pertinent to Glen Canyon Dam operations are being addressed in the GCDEIS. Issues which are pertinent to other specific reaches of the river or specific facilities or pertinent to daily or short-term operations would be properly addressed in NEPA analyses of the specific projects or facilities involved. The NEPA compliance to be accomplished on results of the review of the Operating Criteria should not be combined with the GCDEIS.

Issue 6: Whether the Operating Criteria should take into account riverine conditions below Hoover Dam along the river between reservoirs as well as within the reservoirs, particularly with respect to fish and wildlife, recreation, and other environmental and ecological factors.

Analysis: The only Lower Basin reservoirs to which the Operating Criteria apply are those constructed and operated under the authority of the Boulder Canyon Project Act and the Boulder Canyon Project Adjustment Act. The Operating Criteria are primarily concerned with the longer-term water operations in the Upper and Lower Basins.

Flows in the river system from Hoover Dam to Mexico are governed overall by the Compact, the Supreme Court Decree, the Mexican Water Treaty, flood control regulations, and contracts with water users. Within the limits imposed by these factors and the reservoir space available for regulation, flows are also affected by power operations. Fish and wildlife, recreation, and environmental considerations are taken into account, and flows can be modified (and have been in the past) to enhance these project purposes within the limits

defined by the governing factors mentioned above. The existing Operating Criteria are flexible enough to allow this and need not be modified. Considerations of all purposes are addressed during development of the AOP. State, Federal, and local agencies concerned primarily with fish and wildlife, recreation, and environmental purposes are part of the AOP process.

Issue 7: Whether the Operating Criteria should be flexible enough to accommodate interim flows and operational changes at Glen Canyon Dam.

Analysis: The Operating Criteria were developed to accomplish the objectives of section 602(a) of the 1968 Colorado River Basin Project Act (Pub. L. 90–537). Specific monthly, daily, and hourly operations were not detailed in Public Law 90–537, and correspondingly, they are not detailed in the Operating Criteria. The Operating Criteria are sufficiently flexible and need not be modified to deal with the changes in monthly, daily and hourly operations at Glen Canyon Dam.

Issue 8: Whether scheduled special releases, ecosystems, historical stream flow criteria, and a critical period should be factors considered in determining 602(a) storage.

Analysis: Section 602(a) of Public Law 90–537 provides for sufficient storage of water in the Upper Basin to assure certain required deliveries to the Lower Basin without impairing the annual Upper Basin consumptive uses pursuant to the Compact. Article II(1) of the Operating Criteria requires the Secretary to determine (for each AOP) the quantity of 602(a) storage, after consideration of all applicable laws and relevant factors. The article lists several of the relevant factors but specifically states that the Secretary is not limited to those listed. The Secretary is therefore allowed, and indeed required, to consider all factors which are relevant to the determination of the 602(a) storage quantity during the preparation of each AOP. The process for preparing AOP's has recently been expanded to include additional agencies, organizations, and representatives from the public who can provide input for the identification of the relevant factors. The Operating Criteria already provide for considering additional factors when determining 602(a) storage and should not be modified for that purpose.

Issue 9: Whether the review of the Operating Criteria should be subject to NEPA, and whether the Environmental Impact Statement process could be used to assess operational aspects at Colorado River dams.

Analysis: Reclamation is currently applying the NEPA process to several projects associated with the Colorado River where proposed actions are being considered. Two of these are:

1. GCDEIS.
2. Hoover Dam Modification.

NEPA compliance will be accomplished on the results of the review of the Operating Criteria. The form and extent of such compliance will depend on the final results of the review.

Issue 10: Whether the Colorado River System reservoirs are being operated in accordance with: The Operating Criteria as promulgated; provisions of the "Law of the River" as it currently exists; best management practices for the use, management and supply of water under current conditions and standards; whether the Operating Criteria, risk analysis, future use estimates, critical storage requirements, and maximizing beneficial use in operation of Colorado River reservoirs are subjected to loose definitions and piecemeal application; and whether the Operating Criteria need to be more rigorously applied during the AOP process.

Analysis: The State of California and its water users believe that attention to the above matters will allow greater beneficial uses of water in the Lower Basin without unduly increasing the risk of shortage to United States uses. Specifically, they want assurances that the system of reservoirs are being operated:

1. In accordance with the Operating Criteria as promulgated;
2. In accordance with provisions of the "Law of the River" as it currently exists;
3. In accordance with best management practices for the use, management, and supply of water under current conditions and standards.

Based on their review of the Operating Criteria and their experience with the AOP development process, they believe that:

1. The Operating Criteria are being implemented in a piecemeal fashion rather than being considered in their entirety.
2. Consideration of all applicable laws and relevant factors including water supply risk assessment are not being considered adequately in the development of the AOP.
3. Accurate and reasonable estimates of current and future consumptive use within the Colorado River Basin are not factored into the analyses of the reservoir operations and assessments of risk.
4. Critical reservoir storage requirements for meeting the need for water in the Upper Basin and the Lower Basin have not been developed.
5. The degree of confidence in the risk assessment related to water conservation is not commensurate with the degree of certainty being required for other parameters used to guide the operation of the system reservoirs.
6. Risk assessments and reservoir operations have not been modified in consideration of best management practices appropriate for the use, management, and supply of water under current conditions and standards.
7. Several provisions contained in the Operating Criteria lack precise definition or are being interpreted based on convenience rather than in accordance with the intent of the statutes.
8. Maximizing the beneficial use of the available water resources within the Colorado River Basin and each state's Colorado River apportionment are not primary considerations when the AOP is developed.

Interior agrees that these areas need to be considered and studied so that the Colorado River is operated in the best manner possible. Reclamation and the Basin States have committed to continued support and participation in the study effort (through the Colorado River Management Work Group) on the above issues and other related or affected matters.

Necessary studies will be completed and specific procedures will be recommended to the Commissioner of Reclamation for guiding preparation of future AOP's for the Colorado River System reservoirs.

Issue 11: Whether the Operating Criteria should recognize the Federal Indian trust responsibility and provide for participation in reviews by Indian Tribes to the same extent as participation by Basin States.

Analysis: Section 602(b) of Public Law 90–537 specifically requires the Secretary to consult with state representatives (as designated by the Governors) if modification of the Operating Criteria is considered. In addition, however, the Operating Criteria provide that "The Secretary will sponsor a formal review of the Operating Criteria at least every 5 years with participation by state representatives as each Governor may designate and such other parties and agencies as the Secretary may deem appropriate."

The Indian Tribes and many other parties and agencies were notified and invited to participate in this review and will be invited to participate in future reviews as well. No change should be

made in the Operating Criteria, but the Indian Tribes should be assured of their right to participate in reviews of the Operating Criteria, as well as in the AOP development process.

Issue 12: Whether a long range operation plan for Colorado River reservoirs should be developed before the decision is made on Glen Canyon Dam.

Analysis: It is presumed that the commenter is referring to the decision on whether to modify the existing Operating Criteria when mentioning a "long-range operational plan." Some operational parameters at Glen Canyon Dam may be altered as a result of the GCDEIS, but these need not be specified in the Operating Criteria since they will be addressed in the final Glen Canyon Dam operating criteria. Furthermore, the type of parameters that could change would be more appropriately addressed in the AOP development process. Therefore, it is not necessary to wait for results of the GCDEIS prior to making a decision on the long-range Operating Criteria.

Issue 13: Whether the Operating Criteria should be more flexible in the time allowed for equalization of storage between Lakes Powell and Mead to allow a more gradual reduction in annual flows when going from a wet period to a dry period.

Analysis: The storage equalization provision originates in Public Law 90–537, Section 602(a)(3)(ii) and is repeated in Article II(3)(b) of the Operating Criteria. The intent of the equalization provision is to maintain, as nearly as practicable, active storage in Lake Mead equal to the active storage in Lake Powell. Storage equalization releases shall be made from Lake Powell to the extent they can be reasonably applied in the Lower Basin States for the uses specified in Article III(e) of the Colorado River Compact unless the active storage in Lake Powell is less than the active storage in Lake Mead. Also, these releases can only be made if the storage in Lake Powell is greater than that required for 602(a) purposes.

This provision is the mechanism by which water excess to Upper Basin needs (and excess to 602(a) storage levels) is transferred to Lake Mead and the Lower Basin. It also helps to equalize power generation benefits and to keep the recreation pools of the two lakes relatively equal.

The decision on when and over what time period to equalize is made through the current AOP process. The flexibility inherent in the process allows storage equalization to be made in a way that benefits project purposes. The Operating Criteria should not be changed with respect to storage equalization.

Proposed Decision: Interior has considered issues arising from the review of the Operating Criteria. After a careful review of the issues, solicitation of involved parties' responses to Reclamation's analysis, consultation with the Governor's representatives of the Basin States, and revision of Reclamation's analysis in response to comments received, the Department proposes no modifications of the Operating Criteria at this time.

Dated: September 2, 1992.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 92–21681 Filed 9–9–92; 8:45 am]

BILLING CODE 4310–01–M

Minerals Management Service

Outer Continental Shelf (OCS) Advisory Board—Policy Committee; Notice and Agenda for Meeting

The Policy Committee of the OCS Advisory Board will meet Tuesday, October 20 and Wednesday, October 21, 1992, at the Ocean Place Hilton, One Ocean Boulevard, Long Branch, New Jersey (908) 571–4000.

The agenda will cover the following principal subjects:

Tuesday, October 20

—America's Energy Future and the National Energy Strategy
—The Lucas Decision: Implications for Moratoria and Buybacks
—Sand and Gravel Extraction: The United Kingdom and European Experience
—Future of the OCS: The Shirley Report Revisited

Wednesday, October 21

—Oil Spill Response Research
—Oil Pollution Act
—Subcommittee Report on OCS Sand, Gravel and Shell Resources
—Committee Roundtable

The meeting is open to the public. Upon request, interested parties may make oral or written presentations to the Policy Committee. Such requests should be made no later than October 2, 1992, to the Office of OCS Advisory Board Support, Minerals Management Service, 381 Elden Street, MS–4110, Herndon, Virginia 22070, Attention: Terry Holman.

Requests to make oral statements should be accompanied by a summary of the statement to be made. For more information, call Terry Holman at (703) 787–1211.

Minutes of the Policy Committee meeting will be available for public inspection and copying at the Minerals Management Service in Herndon, Virginia. This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law No. 92–463, 5 U.S.C. appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Dated: August 28, 1992.

Thomas Gernhofer,

Associated Director for Offshore Minerals Management.

[FR Doc. 92–21710 Filed 9–9–92; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

National Register of Historic Places, Notification of Pending Nomination

In order to assist in its preservation, the commenting period for the following property has been shortened to seven days:

Iowa

Cerro Gordo County

Stockman, Dr. G. C., House (Prairie School Architecture in Mason City TR) 530 1st St. NE. Mason City, 80001441

Beth L. Savage,

Acting Chief of Registration, National Register.

[FR Doc. 92–21736 Filed 9–9–92; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6 (Sub-No. 340X)]

Burlington Northern Railroad Co.; Discontinuance of Trackage Rights Exemption; Between East Dubuque, IL and Dubuque, IA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission is exempting from the prior approval requirements of 49 U.S.C. 10903–10904 Burlington Northern Railroad Company's discontinuance of trackage rights operations over the Dunleith and Dubuque Bridge, located between East Dubuque, IL and Dubuque, IA, subject to employee protective conditions.

DATES: This exemption will be effective on October 10, 1992. Petitions to stay must be filed by September 25, 1992. Petitions for reconsideration must be filed by October 5, 1992.

ADDRESSES: Send pleadings referring to Docket No. AB–6 (Sub-No. 340X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: Michael E. Roper, Associate General Counsel, Burlington Northern Railroad, 3800 Continental Plaza, 777 Main Street, Ft. Worth, TX 76102.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610, [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721].

Decided: September 1, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–21724 Filed 9–9–92; 8:45 am]

BILLING CODE 7035–01–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Criminal Rules

AGENCY: Judicial Conference of the United States.

SUBAGENCY: Advisory Committee on Rules of Criminal Procedure.

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Advisory Committee on Criminal Rules. The meeting will be open to public observation but not participation. The meeting will commence each day at 9 a.m.

DATES: October 12–13, 1992.

ADDRESSES: Stouffer Madison Hotel, 515 Madison Street, Seattle, Washington 98104.

FOR FURTHER INFORMATION CONTACT: Joseph F. Spaniol, Jr., Secretary, Committee on Rules of Practice and Procedure, Washington, DC 20544, telephone (202) 633–6021.

Dated: September 1, 1992.

Joseph F. Spaniol, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 92–21512 Filed 9–9–92; 8:45 am]

BILLING CODE 2210–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Presenting and Commissioning Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Festivals Overview Section) will be held on September 25, 1992 from 9 a.m.—5 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics will include introductory remarks and a discussion of issues facing the field.

Any interested person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: September 8, 1992.

Yvonne M. Sabine,

Director Panel Operations, National Endowment for the Arts.

[FR Doc. 92–21995 Filed 9–9–92; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Genetic Biology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: Thursday, Friday, and Saturday, October 1, 2, and 3, 1992; 8:30 a.m. to 5 p.m.

Place: The National Science Foundation, 1800 G Street, Washington, DC 20550, room 1242.

Type of meeting: Closed.

Contact person: DeLill S. Nasser, Program Director for Eukaryotic Genetics, Division of Molecular and Cellular Biosciences, room 325, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone: (202) 357–0112.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Genetics Program in the Division of Molecular & Cellular Biosciences at NSF as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 4, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–21707 Filed 9–9–92; 8:45 am]

BILLING CODE 7555–01–M

Ocean Sciences Review Panel; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and time: September 29, 1992; 8:30 a.m. to 5 p.m.

Place: Room 1243, National Science Foundation, 1800 G St. NW., Washington, DC.

Type of meeting: Closed.

Contact person: Dr. Richard B. Lambert, Program Director, GEO, Physical Oceanography Program, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9639.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the WOCE (Indian Ocean) Interagency Panel as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 4, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–21705 Filed 9–9–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel In Advanced Scientific Computing, Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and time: September 29, 1992; 8:30 a.m. to 5 p.m.

Place: Room 417, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Robert Voigt, Program Director, New Technologies, room 417, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7727.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information: financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 4, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–21708 Filed 9–9–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: September 30, 1992, 8 a.m. to 5 p.m.

Place: Room 1151, 1800 G Street NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Albert B. Harvey, Program Director, Division of Electrical and Communications Systems, room 1151, 1800 G Street NW., Washington, DC, 20550. Telephone (202) 357–9618.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 4, 1992.

M. Rebecca Winkler,

Committee Management Office.

[FR Doc. 92–21704 Filed 9–9–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Elementary, Secondary and Informal Education; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: September 23, 1992, 6 p.m. to 8 p.m.; September 24–25, 1992, 8 a.m. to 5 p.m.

Place: The Pullman Highland Hotel, 1914 Connecticut Avenue, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Barbara Butler, Program Director, Division of Elementary, Secondary Informal Education, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 375–7076.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Informal Science Education research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 4, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–21702 Filed 9–9–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: October 1–2, 1992, 8:30 a.m. til 5 p.m.

Place: National Science Foundation, 1800 G Street, NW., room 543, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Drs. Deborah Lockhart and Keith Crank, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–3453 or 357–3693.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Graduate Research Traineeship proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 4, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–21703 Filed 9–9–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mechanical and Structural Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announced the following meeting:

Name: Special Emphasis Panel in Mechanical and Structural Systems.

Date and Time: September 28, 1992, 8:30 a.m. to 5 p.m.

Place: National Science Foundation, room 1133, Washington, DC 20550.

Notice of Meeting: Closed.

Contact Person: Dr. Mehmet T. Tumay, Program Director, 1800 G Street, NW. room 1108, Washington, DC 20550, Telephone: (202) 357–9542.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Review and evaluate Mechanical and Structural Systems NSF SBIR proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 4, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–21706 Filed 9–9–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Undergraduate Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Division of Undergraduate Education.

Date and Time: October 1, 1992, 7:30 p.m. to 9 p.m.; October 2, 1992, 8:30 a.m. to 5 p.m.; October 3, 1992, 8:30 a.m. to 3 p.m.

Place: The Saint James Hotel, 950 24th Street, NW., Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Dr. Marj Enneking, Program Director, 1800 G Street, NW., room 1210, Washington, DC 20550, Telephone: (202) 357–7051.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Teacher Preparation Panel Meeting.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 4, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–21709 Filed 9–9–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–77]

Environmental Assessment and Finding of No Significant Impact Regarding Proposed Order Approving Decommissioning Plan and Authorizing Decommissioning Catholic University of America

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an Order authorizing the Catholic University of America (CUA) to decommission and dismantle the Aerojet-General Nucleonics Corporation (AGN) AGN–201 Research Reactor located on the licensee's campus in Washington, DC, and to dispose of the components in accordance with the CUA application dated February 6, 1992.

Environmental Assessment

Identification of Proposed Action

By application dated February 6, 1992, CUA requested authorization to decommission, decontaminate and dismantle the CUA AGN–201 Research Reactor, and to dispose of its component parts in accordance with the proposed Decommissioning Plan for the AGN–201 Research Reactor Facility License No. R–31 (Decommissioning Plan). The CUA AGN–201 Research Reactor was shut down in December 1982, and has not operated since then. Following the reactor shutdown, the fuel was removed from the reactor and moved to the CUA fuel storage facility. Opportunity for hearing was afforded by a "Notice of Proposed Issuance of Orders Approving Decommissioning Plan, Authorizing Decommissioning, and Terminating Facility License" published in the **Federal Register** on August 20, 1992, (57 FR 37850). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

Need for Proposed Action

The proposed action is needed in order to decommission the facility and terminate the facility license to allow unrestricted use of the area by CUA.

Environmental Impact of the Proposed Action

All proposed activities in connection with decommissioning and decontamination of the CUA AGN–201 Research Reactor will be planned and controlled as specified in the CUA application dated February 6, 1992. All components that are determined to be contaminated and cannot be acceptably decontaminated, will be removed, packaged, and shipped offset. Radiological control requirements will be in place and implemented to ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR part 20 and are as low as reasonably achievable (ALARA).

All decontamination will be performed by qualified personnel in accordance with the previously reviewed radiation safety manual and will be overseen by experienced Radiation Safety Office staff. Solid and liquid waste will be removed from the facility and managed in accordance with NRC requirements. The collective radiological dose equivalent to the CUA staff for the project has been estimated to be less than 0.1 person-rem.

Based on the review of the specific proposed activities associated with the dismantling and decontamination of the CUA AGN–201 Research Reactor, the staff has determined that there will be no significant increase in the amounts of effluents that may be released offsite, and no significant increase in individual or cumulative occupational or population radiation exposure.

The staff has also determined that the proposed activities will not result in any significant impacts on air, water, land, or biota in the area or have any other significant environmental impact.

Alternative Use of Resources

The only alternative to the proposed decommissioning, dismantling and decontamination activities is to have CUA maintain possession of the reactor. This approach would include monitoring and reporting during entombment of the facility or for the duration of the safe storage period. However, CUA intends to use the area for other purposes. The alternative of not decommissioning reactors was rejected in the Generic Environmental Impact Statement on Decommissioning, NUREG–0586. No alternative appears that will have different or lesser effect on the use of available resources, and other alternatives need not be evaluated.

Agencies and Persons Consulted

No outside agencies or persons were consulted in the evaluations of the proposed actions.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action based upon the foregoing environmental assessment. The Commission concludes that the proposed action will not have a significant effect on the quality of the human environment for the reasons set out above.

For detailed information with respect to this proposed action, see the application for decommissioning, dismantling, decontamination and license termination dated February 6, 1992, and the Safety Evaluation prepared by the NRC staff. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 2nd day of September 1992.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–21749 Filed 9–9–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting of the Joint Subcommittee on Thermal Hydraulic Phenomena and Core Performance

Postponed

A meeting of the ACRS joint Subcommittee on Thermal Hydraulic Phenomena and Core Performance scheduled to be held on Tuesday, September 15, 1992, 8:30 a.m., room P–110, 7920 Norfolk Avenue, Bethesda, MD has been postponed to Thursday,

September 17, 1992. Notice of this meeting was published in the Federal Register on Wednesday, September 2, 1992 (57 FR 40204). All other items pertaining to this meeting remain the same as previously published.

For further information contact: Mr. Paul Boehnert, cognizant ACRS staff engineer, (telephone 301/492–8558) between 7:30 a.m. and 4:15 p.m. (EST).

Dated: September 3, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–21755 Filed 9–9–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting of the Subcommittee on Computers in Nuclear Power Plant Operations; Cancellation

A meeting of the ACRS Subcommittee on Computers in Nuclear Power Plant Operations scheduled to be held on Tuesday, September 8, 1992, room P–110, 7920 Norfolk Avenue, Bethesda, MD has been canceled since the matter scheduled for discussion by the Subcommittee will be discussed by the full Committee during its September 10–12, 1992 meeting. Notice of this meeting was published in the Federal Register on Wednesday, September 2, 1992 (57 FR 40205).

For further information contact: Mr. Douglas Coe, the cognizant ACRS staff engineer, (telephone 301/492–8972) between 7:30 a.m. and 4:15 p.m. (EST).

Dated: September 3, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–21756 Filed 9–9–92; 8:45 am]

BILLING CODE 7590–01–M

Issuance of Generic Communication; NRC Generic Letter 92–04: Resolution of the Issues Related to Reactor Vessel Water Level Instrumentation in BWRs Pursuant to 10 CFR 50.54(f)

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance of Generic Communication.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued the subject Generic Letter, dated August 19, 1992, to all Boiling Water Reactor (BWR) licensees of operating reactors. This Generic Letter was issued without prior notice because of the safety significance of the problem addressed. The purpose of the Generic Letter is to request information from BWR licensees regarding the adequacy of the reactor vessel water level instrumentation, in accordance with 10 CFR 50.54(f). The NRC staff has determined that there is a potential for significant error in reactor vessel water level indication resulting from the evolution of noncondensible gases out of solution in the reference leg following a rapid depressurization event. This is important to safety, as water level signals are used for actuating automatic safety systems and for guidance to operators during and after an event.

BWR licensees are required to respond to the Generic Letter by September 27, 1992. The responses will address the licensees' plant-specific determination of the impact of potential level indication errors on safety system performance and operator actions; short term actions implemented; and licensees' plans and schedules for long term corrective actions, including any proposed hardware modifications.

NRC generic communications are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the local public document rooms (LPDRs) for the addressees of the communications. Information on the locations of LPDRs can be obtained by calling the NRC Local Public Document Room staff at (301) 492–4344, or toll-free at (800) 638–8081.

Dated at Rockville, Maryland, this 3rd day of September 1992.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III–3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–21751 Filed 9–9–92; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Revision of OMB Circular No. A–131; Invitation for Public Comment

AGENCY: Office of Federal Procurement Policy, OMB.

ACTION: The Office of Management and Budget (OMB) is requesting comments on OMB Circular No. A–131, "Value Engineering." The Circular is being revised in accordance with the sunset provisions contained in the January 1988 Circular.

PRESIDENT'S COUNCIL ON MANAGEMENT IMPROVEMENT: At the request of the Administrator for Federal Procurement Policy, the President's Council on Management Improvement (PCMI) made recommendations to OMB for a revised Government-wide policy on value engineering. The PCMI membership consists of senior-level officials from all the major agencies and their review of Circular A–131 has helped assure a truly Government-wide approach to value engineering. The attached draft revision of Circular A–131 is the culmination of the combined efforts of OFPP, a PCMI task force chaired by the General Services Administration, and extensive deliberations of the full PCMI.

SUMMARY: OMB Circular No. A–131 requires agencies to establish value engineering programs and to use value engineering techniques, where appropriate, to reduce nonessential procurement and program cost. As defined in OMB Circular No. A–131, VE is an organized effort to analyze the functions of systems, equipment, facilities, services, and supplies for the purpose of achieving the essential functions at the lowest life cycle cost consistent with required performance, reliability, quality and safety.

The Circular requires that agencies implement the following management and procurement practices: (1) Emphasize, through training and other means, the potential of value engineering to reduce unnecessary cost; (2) Establish a focal point within each agency to monitor, manage and maintain data on agency value engineering programs; (3) Establish criteria and guidelines for screening programs and projects which might benefit from the application of value engineering techniques; (4) Establish guidelines to evaluate value engineering proposals; and (5) Actively solicit value engineering ideas from contractors.

CHANGES FROM THE PREVIOUS CIRCULAR NO. A–131: This proposed revision adds new requirements to Circular A–131 by requiring each agency to develop annual VE plans. Agency plans must identify both the in-house and contractor projects, programs, systems, and products to which VE will be applied in the next fiscal year, and the estimated costs of those projects. In addition, the revision imposes a revised annual reporting requirement to OMB in lieu of the previous ad hoc requirement. The new reporting requirement has two parts: Part I requires agencies to report agency thresholds for VE, agency VE expenditures, agency VE cost savings, and VE cost savings by category (acquisition, program, or other). Part II requires agencies to identify their top twenty fiscal year VE projects and the associated net savings and quality improvements achieved by the agency through application of VE. Finally, the revision emphasizes that value

engineering is one of many management tools that can be used alone or in concert with other management techniques, such as total quality management, to improve operations and reduce costs.

DATES: Comments must be received on or before November 9, 1992.

ADDRESSES: Comments should be submitted to the Office of Management and Budget, Office of Federal Procurement Policy, Room 9001, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Amchin of the Office of Federal Procurement Policy at 395–6803.

Allan V. Burman,

Administrator.

Executive Office of the President, Office of Management and Budget, Washington, DC 20503

The Director

Draft Circular No. A–131—To The Heads of Executive Departments and Establishments

Subject: Value Engineering

1. *Purpose.* This Circular requires Federal Departments and Agencies to use value engineering (VE) as a management tool, where appropriate, in the operation of program and acquisition functions.

2. *Supersession Information.* This Circular supersedes and cancels OMB Circular No. A–131, *Value Engineering*, Dated January 26, 1988.

3. *Authority.* This Circular is issued pursuant to 31 U.S.C. 1111.

4. *Background.* For the purposes of this Circular, value analysis, value management, and value control are considered synonymous with VE. VE is an effective technique for reducing costs, increasing productivity, and improving quality. It can be applied to hardware and software; development, production, and manufacturing; specifications, standards, contract requirements, and other acquisition program documentation; facilities design and construction. It may be successfully introduced at any point in the life cycle of products, systems, or procedures. VE is a technique directed toward analyzing the functions of an item or process to determine "best value," or the best relationship between worth and cost. In other words, "best value" is represented by an item or process that consistently performs the required basic function and has the lowest total cost.

VE originated in the industrial community, and has spread to the Federal Government due to its ability to yield a large return on investment. VE has long been recognized as an effective technique to lower the Government's cost while maintaining necessary quality levels. Its most extensive use has been in Federal acquisition programs.

A recent audit of VE in the Federal Government by the President's Council on Integrity and Efficiency concluded that more can and should be done by Federal agencies to realize the benefits of VE. Reports issued by the General Accounting Office (GAO) and agency Inspectors General have also consistently concluded that greater use of this technique would result in additional savings to the Government.

5. *Relationship to Total Quality Management (TQM) and other management improvement processes.* VE is a management tool that can be used alone or with other management techniques and methodologies to improve operations and reduce costs. For example, VE can be incorporated into the TQM process by using it as an analytical technique in process/product improvement.

VE contributes to the overall management objectives of streamlining operations, improving quality, and reducing costs. The complementary relationship between VE and other management programs increases the likelihood that overall management objectives are achieved.

6. *Definitions.*

a. *Agency.* As used in this Circular, the term "agency" means an executive department or an independent establishment within the meaning of sections 101 and 104(1), respectively, of Title 5, United States Code.

b. *Life-cycle Cost.* The total cost of a system, building, or other product, computed over its useful life. It includes all relevant costs involved in acquiring, owning, operating, maintaining, and disposing of the system or product over a specified period of time.

c. *Savings.* A reduction in (actual savings), or the avoidance of (cost avoidance), expenditures that would have been incurred if program and projects were not evaluated using VE techniques.

(1) *In-house savings.* Net savings achieved by in-house agency staff using VE techniques.

(2) *Contracted savings.* Net savings realized by contracting for the performance of a VE study or by a Value Engineering Change Proposal submitted by a contractor.

d. *Total Quality Management (TQM).* A customer-based management philosophy for improving the quality of products and increasing customer satisfaction by restructuring traditional management practices. An integral part of TQM is continuous process improvement, which is achieved by using analytical techniques to determine the causes of problems. The goal is not just to fix problems but to improve processes so that the problems do not recur. Value engineering can be used as an analytical technique in the TQM process.

e. *Value Engineering.* An organized effort directed at analyzing the functions of systems, equipment, facilities, services, and supplies for the purpose of achieving the essential functions at the lowest life-cycle cost consistent with required performance, reliability, quality, and safety. These organized efforts can be performed by both in-house agency personnel and by contractor personnel.

f. *Value Engineering Change Proposal (VECP).* A proposal submitted by a contractor under the VE provisions of the Federal Acquisition Regulations (FAR) that, through a change in a project's plans, designs, or specifications as defined in the contract, would lower the project's cost to the Government.

g. *Value Engineering Proposal (VEP).* An in-house agency proposal, or a proposal developed by a contractor, to provide VE studies for a project/program.

7. *Policy.* Federal agencies shall use VE as a management tool, where appropriate, to ensure realistic budgets, identify and remove nonessential capital and operating costs, and improve and maintain optimum quality of program and acquisition functions. Senior management will establish and maintain VE procedures and processes to provide for the aggressive, systematic development and maintenance of the most effective, efficient, and economical arrangements for conducting the work of agencies, and to provide a sound basis for identifying and reporting accomplishments.

8. *Agency responsibilities.* To ensure that systemic VE improvements are achieved, agencies shall, at a minimum:

a. Designate a senior management official to monitor and coordinate agency VE efforts.

b. Develop criteria and guidelines for both in-house personnel and contractors to identify programs/projects with the most potential to yield savings from the application of VE techniques. The criteria and guidelines should recognize that the potential savings are greatest during the planning, design, and other early phases of project/program/system/product development. Agency guidelines will include:

(1) Measuring the net saving from value engineering. The net saving from value engineering is determined by subtracting the discounted present value of the Government's cost of performing the value engineering function from the discounted present value of the total saving generated by the function. Discounting should be done at the Treasury's borrowing rate for marketable debt of maturity comparable to the project life. (For more information on discounting see OMB Circular No. A–94).

(2) Return on investment The internal rate of return for a value engineering improvement is determined by calculating the discount rate that equates the discounted present value of the cost of performing the value engineering function with the discounted present value of the saving generated by the function.

(3) Dollar amount thresholds for projects/programs requiring the application of VE. The minimum threshold for agency projects and programs which require the application of VE is $1 million. Lower thresholds may be established at agency discretion for projects having a major impact on agency operations.

(4) Criteria for granting waivers to the requirement to conduct VE studies.

c. Assign responsibility to the senior management official designated pursuant to 6a above, to grant waivers of the requirement to conduct VE studies on certain programs and projects. This responsibility may be delegated to other appropriate officials.

d. Provide training in VE techniques to agency staff responsible for coordinating and monitoring VE efforts and for staff responsible for developing, reviewing, analyzing, and carrying out VE proposals, change proposals, and evaluations.

e. Ensure that funds necessary for conducting agency VE efforts are included in annual budget requests to OMB.

f. Maintain files on projects/programs/systems/products that meet agency criteria for requiring the use of VE techniques. Documentation should include reasons for granting waivers of VE studies on projects/programs which met agency criteria. Reasons for not implementing recommendations made in VE proposals should also be documented.

g. Adhere to the acquisition requirements of the FAR, including the use of VE clauses set forth in Parts 48 and 52.

h. Develop annual plans for using VE in the agency. At a minimum, the plans should identify both the in-house and contractor projects, programs, systems, products, etc., to which VE techniques will be applied in the next fiscal year, and the estimated costs of these projects. The projects, etc., should be listed by category. VEP's and VECP's should be included under the appropriate category. Annual plans will be made available for OMB review upon request.

i. Report annually to OMB on VE activities, as outlined below.

9. *Reports to OMB.* Each agency shall report the Fiscal Year results of using VE annually to OMB, except those agencies whose total budget is under $10 million or whose total procurement obligations do not exceed $10 million in a given fiscal year. The reports are due to OMB by December 31 of the calendar year, and should include the current name, address, and telephone number of the agency's VE manager.

The report format is provided in the Attachment.

Part I of the report asks for net savings achieved through VE. In addition, show the project/program dollar amount thresholds the agency has established for requiring the use of VE. If thresholds vary by category, show the thresholds for all categories. Savings resulting from VE proposals and VE change proposals should be included under appropriate categories.

Value engineering costs and savings should be recorded in the year in which they occur; i.e., a schedule should report the costs and savings for each year. Discounted present values of costs and savings should be reported in addition to undiscounted budget figures. Where total discounted or undiscounted values are reported, the time span represented by the total should also be reported.

Part II asks for a description of the top 20 fiscal year VE projects (or all projects if there are fewer than 20). List the projects by title and show the net savings and quality improvements achieved through application of VE.

10. *Inspectors General audits.* Two years after the final issuance of this revised Circular, Inspectors General (IGs) shall audit agency value engineering programs to (1) validate the accuracy of agency reported value engineering savings and (2) assess the adequacy of agency value engineering policies, procedures and implementation of this revised Circular. Periodically thereafter, agency IGs shall audit agency IGs shall audit agency reported VE savings as the need arises.

11. *Related Guidance.* For detailed guidance on value engineering refer to the appropriate sections of the Federal Acquisition Regulations. For guidance on discount rates to be used in evaluating cost and benefits, see OMB Circular No. A–94.

12. *Effective date.* This Circular is scheduled to take effect on January 30, 1993.

13. *Sunset review.* The policies contained in this Circular will be reviewed by OMB five years from the date of issuance.

14. *Inquiries.* Further information about this Circular may be obtained from: Charles Clark or Wayne Amchin, Office of Management and Budget (OMB), 725 17th Street, NW, Washington, DC 20503 Telephone (202) 395–6803.

Richard Darman,

Director.

Attachment

PART I.—ANNUAL VALUE ENGINEERING REPORT

Agency Name		Fiscal Year
Responsible Official	Title/Address/Telephone	Date

Agency VE Expenditures	Agency Thresholds for VE
Show the estimated amount of funds invested in VE by the agency:	Give the dollar thresholds by category for projects requiring VE:

Total Agency VE Cost Savings

Sum of net savings reported below by category:	Actual Savings		Cost Avoidance		Total Savings		Savings Grand Total (In-house + Contract)
	In-house	Contract	In-house	Contract	In-house	Contract	

VE Cost Savings by Category (Show the net savings for each category.)

Category	Actual Savings		Cost Avoidance		Total Savings		Savings Grand Total (In-house + Contract)
	In-house	Contract	In-house	Contract	In-house	Contract	
1. Acquisition							
2. Program							
3. Other (Please Specify)							
a.							
b.							
c.							

PART II.—ANNUAL VALUE ENGINEERING (VE) REPORT

Agency Name	Fiscal Year

VE Project Description (List up to the top 20 VE projects by name. Show the net in-house/contractor VE savings. Provide any quality or other nonquantifiable improvements resulting from VE.)

Project title	Actual savings		Cost Avoidance		Quality improvements
	In-house	Contract	In-house	Contract	

Project title	Actual savings		Cost Avoidance		Quality improvements
	In-house	Contract	In-house	Contract	

Continue on additional sheets, if needed.

[FR Doc. 92-21734 Filed 9-9-92; 8:45 am]
BILLING CODE 3110-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Employer Service and Compensation Reports.
(2) *Form(s) submitted:* UI-41, UI-41a.
(3) *OMB Number:* 3220-0070.
(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.
(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
(6) *Frequency of response:* On occasion.
(7) *Respondents:* Businesses or other for profit.
(8) *Estimated annual number of respondents:* 700.
(9) *Total annual responses:* 6,000.
(10) *Average time per response:* .1333 hours.
(11) *Total annual reporting hours:* 800.
(12) *Collection description:* The reports obtain the employee's service and compensation for a period subsequent to those already on file and the employee's base year compensation. The information is used to determine the entitlement to and the amount of benefits payable.

ADDITONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,
Clearance Officer.
[FR Doc. 92-21737 Filed 9-9-92; 8:45 am]
BILLING CODE 7905-01-M

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning October 1, 1992, shall be at the rate of 31 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning October 1, 1992, 33.0 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 67.0 percent of the taxes collected under such sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

By Authority of the Board.
Beatrice Ezerski,
Secretary to the Board.
[FR Doc. 92-21738 Filed 9-9-92; 8:45 am]
BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31139; File No. SR-DTC-92-13]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Dividend Reinvestment Service and Optional Dividend Procedures

September 3, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 3, 1992, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-92-13) as described in Items I, II, and III below, which Items have been prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change enables DTC's existing Dividend Reinvestment Service ("DRS") and existing Optional Dividend Procedures ("ODP") to be accessed through the existing Elective Dividends function ("EDS") on DTC's Participant Terminal System ("PTS").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in

[1] 15 U.S.C. 78s(b) (1988).

sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Existing DRS enables stockholders through their custodian participants to automatically reinvest part or all of a cash dividend. Existing ODP enables stockholders through their custodian participants to take all or part of a declared dividend in cash or stock. Under the proposed rule change, DRS and ODP will be available over PTS through the EDS function.

As described in a previous filing (File No. SR–DTC–91–14), the participant would first use the EDS function to call up the EDS menu to display the CUSIPs in its record date position for which any or all of DTC's elective dividend options are available.[2] If PTS identifies securities eligible for DRS or ODP in the participant's record date position, PTS will then guide the participant through the instruction screens, as shown in Exhibit 3 to the filing.

The proposed rule change is consistent with the requirements of the Act, as amended, and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of securities transactions by automating previously manual procedures.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

DTC announced in File No. SR–DTC–91–14 that DRS and ODP would be added to EDS at a future time. No written comments have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 because the proposed rule change effects a change in an existing service of DTC that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC for which DTC is responsible, and (B) does not significantly affect the respective rights or obligations of DTC or its participants. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[2] Other EDS options currently available are the Foreign Currency Option and the Foreign Securities Option. See Securities Exchange Act Release No. 29814 (October 11, 1991), 56 FR 52563.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW. Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to file number SR–DTC–92–13 and should be submitted by October 1, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–21743 Filed 9–9–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31138; File No. SR–GSCC–92–07]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Filing of a Proposed Rule Change Relating to Enhancements to the Comparison System

September 3, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 30, 1992, Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow GSCC to modify the criteria for comparison of trade data.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) An ongoing focus of attention by GSCC has been on the need to improve the overall comparison rate for members. Ordinarily, in order for a comparison to be generated by GSCC, each required match data item such as the identities of the parties to the trade, par value, CUSIP number, trade date, settlement date, and final money information need to match exactly. Often, however, as the result of a lack of submission by a counterparty of a particular required data item or a mistake in its data submission, a comparison cannot be generated by GSCC.

An appropriate means of addressing this problem is for GSCC to have the ability to, if the data submitted on each side does not meet all of the criteria for comparison and the nonmatch item(s) fits within certain predefined parameters, compare the trade based on a binding presumption (which is readily identifiable by a member) as to which party's data was submitted correctly. In this regard, for example, the Commission has authorized GSCC to have the discretion to presume that a match of trade data exists, and that a comparison should be issued, under the following circumstances:

• If, on submission of data on a side of a trade, an executing firm field is blank, GSCC would presume that the submitting member is the executing firm on that side of the trade. Also, if trade data does not compare due to unmatched executing firm information, GSCC may compare the trade based on a match between the two submitting members. Moreover, if a side submitted by a member against another member does not compare as submitted, but a matching side is submitted by a third member that is affiliated with the second member, GSCC may compare the trade as if the first member had submitted the trade against the third member.

• When the yield-to-price conversion feature is implemented, if the data submitted on a yield basis involving a trade between a broker member and a dealer member meet all of the criteria for comparison other than the information submitted regarding commission, and the dealer has submitted a commission amount that does not match the commission amount submitted by the broker, the trade will be compared based on the commission amount submitted by the broker (within a specified dollar tolerance).

Where a match has been presumed by GSCC, in order to facilitate the ability of members subsequently to reconcile GSCC's comparison data with their internal data, GSCC provides members with information noting each compared trade with a data difference.

GSCC is now requesting approval to enhance its ability, as described below, to compare a trade whether the data submitted does not meet all of the criteria for comparison and the nonmatch item(s) fits within certain predefined parameters:

(1) Summarization of Par Amounts

GSCC would have the ability to compare data on two buy sides with data on one or two sell sides, and vice versa, if the data matches except for par amount and final money amount, and the total of the par amounts and final money amounts is the same on both sides. This summarization process would apply to yield trades as well; the submitted yields when combined must match exactly, while the commissions, if different, must fall within GSCC's system tolerance.

(2) Trade Date

GSCC would have the ability to compare a buy or sell side with a contra sell or buy side that matches in all respects except for trade date, with the earlier trade date being presumed to be the correct trade date. GSCC would look to match a buy or sell side with a contra sell or buy side with the closest trade date.

The filing also makes clear that more than one presumption of a match of data may be used by GSCC to generate a comparison of a trade, and that final money amounts on the buy and sell sides of a trade will match if they fall within a dollar tolerance established by GSCC.

(b) The proposed rule change would assist members in comparing trades. This in turn would bolster reconciliation of unmatched trade data. In general, the proposed rule change would provide the benefits of GSCC's comparison process to a broader range of trades. Thus, it is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact on, or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not yet been solicited or received. Members will be notified of the proposed rule change, and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to file number SR–GSCC–92–07 and should be submitted by October 1, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–21746 Filed 9–9–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31137; File No. SR–GSCC–92–08]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fee Changes

September 3, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 14, 1992, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow GSCC to impose a fee of $500 on netting members for their netting system activity.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the

proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) GSCC incurs certain costs in the course of providing services to its members regardless of the level of activity of such members as reflected in trade data submitted to GSCC. These costs result from expenses related to, for example, providing communications facilities, operating and maintaining hardware, developing and maintaining software, conducting monitoring and surveillance activities, and processing applications for membership. As a result, GSCC currently imposes a minimum fee on all members for their comparison system activity of $500 per month. The minimum monthly fee for a comparison-only member that has an affiliate that is a netting member is $250.

GSCC does not impose an additional minimum fee for membership in the netting system, even though such membership creates certain increased costs for GSCC. These additional costs, which relate solely to netting system membership, include the evaluation of an additional membership application, enhanced surveillance measures, the administration of clearing fund requirements, greater participant services needs, and the costs of maintaining a clearance and settlement staff. GSCC believes that it is appropriate and equitable for netting members to bear an additional monthly minimum fee for netting system membership in order to cover fixed expenses that relate solely to netting system membership. A $500 per month fee is, in GSCC's view, a reasonable reflection of these additional costs.

This rule filing is intended to take effect on September 1, 1992. Its effect will first be reflected in the October billing.

(b) The proposed fee change will more closely and fairly reflect the costs incurred by GSCC in providing netting services to its members and, thus, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to self-regulatory organizations.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not yet been solicited or received. Members will be notified of the proposed rule change and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b–4 thereunder because the proposed rule change establishes a fee for a service provided by GSCC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to file number SR–GSCC–92–08 and should be submitted by October 1, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–21747 Filed 9–9–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31140; International Series Release No. 449; File No. SR–ISCC–92–02]

Self-Regulatory Organizations; International Securities Clearing Corporation; Filing and Immediate Effectiveness of a Proposed Rule Regarding a Revised Letter of Understanding That ISCC Will Use in Connection With Its Global Clearance Network Service

September 3, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 8, 1992, the International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Proposed rule change consists of a letter of understanding that ISCC will use in connection with its Global Clearance Network Service.[2] The revised letter eliminates the participant requirement to commit to a specified number of transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISCC included statements concerning the purpose of and basis for the proposed rule change and discussed any

[1] 15 U.S.C. 78s(b)(1).

[2] ISCC's Global Clearance Network Service permits qualified ISCC members, utilizing standard input and output format, to obtain through ISCC, foreign clearing, settlement, and custody services offered by a bank selected by ISCC. ISCC currently has an arrangement with Citibank, N.A. ("Citibank") that permits ISCC members that independently qualify as Citibank customers to have access to clearance, settlement, and custody services in any of 25 markets worldwide in which Citibank does business. Securities Exchange Act Release No. 29841; International Series Release No. 333 (October 18, 1991), 56 FR 55960.

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to file with the Commission a revised letter of understanding that ISCC will use in connection with its Global Clearance Network Service. The letter has been revised to eliminate the requirement of a participant to commit to a specified number of transactions.[3] This change is being made at the direction of the board of ISCC because it is believed that the requirement poses an impediment to the marketing of the service due to the industry's need for maximum flexibility as market conditions dictate. ISCC believes the proposed rule change will promote the prompt and accurate clearance and settlement of international securities transactions and is therefore consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder.

(B) Self-Regulatory Organization's Statement on Burden on Competition

ISCC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments have been solicited or received. ISCC will notify the Commission of any written comments received.

[3] ISCC, however, remains committed to a specified number of transactions with Citibank. See Securities Exchange Act Release No. 29841; International Series Release No. 333 (October 18, 1991), 56 FR 55960. Since January, however, when the Global Clearance Network Service began commercial operation, volume on the Global Clearance Network Service has exceeded ISCC's projections, and if volume continues at current levels it will comfortably exceed the guaranteed amount. Telephone conversation between Karen L. Saperstein, Associate General Counsel, ISCC, and Jack Drogin, Attorney Adviser, Division of Market Regulation, Commission (September 2, 1992). If, on the other hand, volume should fall off dramatically, ISCC can terminate the agreement with Citibank on ninety day's written notice after ISCC failed to meet minimum guaranteed volume levels for a consecutive three month period.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b–4 thereunder, because the proposed rule change effects a change in an existing service of a clearing agency that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective obligations of the clearing agency or persons using the service. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room at the address above. Copies of such filing will also be available for inspection and copying at the principal office of ISCC. All submissions should refer to the File Number SR–ISCC–92–02 and should be submitted by October 1, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 92–21748 Filed 9–9–92; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12).

[Release No. 34–31145; File No. SR–Phlx–91–27]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Amendments to and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Listing of Options on the Keefe, Bruyette & Woods, Inc. Bank Index

September 3, 1992.

I. Introduction

On October 23, 1991, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading of index options on the Keefe, Bruyette & Woods, Inc. ("KBW") Bank Index ("Bank Index" or "Index").[3] This order approves the Exchange's proposal.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19B–4 (1991).

[3] The Phlx has filed several amendments to the proposal. First, The Exchange submitted Amendment No. 1 to the filing on February 27, 1992. This amendment provides that the Exchange will submit a rule proposal pursuant to section 19(b) of the Act to continue listing the Index options if the number of component issues changes to either less than 15 or more than 30. See letter from Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, to Thomas R. Gira, Branch Chief, Options Regulations, SEC, dated February 27, 1992 ("Amendment No. 1"). Second, the Exchange amended the proposal on June 15, 1992, to provide that at least 90% of the stocks within the Index must be options eligible at all times. See letter from William W. Uchimoto, General Counsel, Phlx, to Monica Michelizzi, Staff Attorney, Options Branch, SEC, dated June 15, 1992 ("Amendment No. 2"). Third, on July 2, 1992, the Phlx amended the proposal to provide that the final settlement value of expiring Index options will be based on the opening prices of the component stocks on the trading day prior to expiration, instead of their closing prices. *See* letter from William W. Uchimoto, General Counsel, Phlx, to Thomas R. Gira, Branch Chief, Options Regulation, SEC, dated July 2, 1992 ("Amendment No. 3"). In addition, the Phlx provided additional data concerning the composition and design of the Index. *See* letter from William W. Uchimoto, General Counsel, Phlx to Howard L. Kramer, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 22, 1992 ("Phlx Letter").

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1, 2, and 3 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for

Continued

The proposed rule change was published for comment in Securities Exchange Act Release No. 30002 (November 26, 1991), 56 FR 63542 (December 4, 1991). No comments were received on the proposed rule change.

II. Description of Proposal

A. General

The Phlx proposes to trade European-style [4] options on the Bank Index, an index developed by KBW, a registered broker-dealer that specializes in U.S. bank stocks. The Index is a capitalization-weighted index [5] composed of 24 select, Federal Deposit Insurance Corporation ("FDIC") insured, geographically representative U.S. commercial bank stocks.

B. Composition of the Index

Currently, the Index is composed of 24 highly capitalized banking companies drawn from five broad groups: (1) Five companies represent the Northeast region of the United States; (2) four represent the Southeast; (3) five represent the Midwest; (4) four represent the West (including the Southwest); and (5) six represent money center banks, the business focus of which are more national in scope. Twenty-one of the companies are listed on the New York Stock Exchange, Inc. ("NYSE") and three are listed on the National Association of Securities Dealers' ("NASD") Automated Quotation System ("NASDAQ"). All NASDAQ stocks in the Index are designated as national market system securities, meaning, among other things, that real-time last sale reports are available for these stocks.[6]

As of November 27,1991, the market capitalizations of the individual stocks in the Index ranged from a high of $12.77 billion to a low of $552 million, with the mean and median being $3.88 billion and $6.66 billion, respectively. The market capitalization of all the stocks in the Index was 95 billion. The total number of shares outstanding for the stocks in the Index ranged from a high of 345.9 million shares to a low of 20.5 million shares. The average price per share of the stocks in the Index, for a six-month period between July 1991 and December 1991, ranged from a high of $77.13 to a low of $9.69. In addition, the average daily trading volume of the stocks in the Index, for the same six-month period, ranged from a high of 1.5 million shares per day to a low of 16,000 shares per day, with the mean and median being 336,000 and 759,000 shares, respectively. Lastly, no one stock comprised more than 13.72% of the Index's total value and the percentage weighting of the five largest issues in the Index accounted for 44.48% of the Index's value. The percentage weighting of the lowest weighted stock was .59% of the Index and the percentage weighting of the five smallest issues in the Index accounted for 6.41% of the Index's value.[7]

C. Maintenance

The Index will be maintained by KBW. In order to ensure that the Bank Index contains stocks that represent the performance of the bank stock segment of the market, KBW represents that it has selected and will continue to select component securities based on a variety of factors, including size, capitalization, earnings performance, liquidity, capitalization ratios, asset quality and profitability. At a minimum, the component stocks of the Index will be reviewed annually to determine whether they, as a group, represent a suitable proxy for the banking industry. A component security will be replaced only when it ceases to exist through merger or acquisition, declares bankruptcy, or if it alters its character so substantially that it no longer operates as a commercial bank. In order to maintain the geographic diversity of the Index, when choosing replacements, KBW represents that it will try to replace a stock with the stock of its acquiring bank, or, alternatively, a bank stock from the same region.

In addition, as noted above, the Phlx's proposal provides that at least 90% of the stocks in the Index must be options eligible in order for the Index options to remain eligible for listing.[8] The Phlx proposal also provides that, in the event that KBW and Phlx determine to change the number of component issues in the Index to less than 15 or more than 30, the Phlx must submit a filing pursuant to section 19(b) of the Act to receive Commission approval to continue listing the Index options.[9]

Finally, under the license agreement between the Phlx and KBW, KBW is required to give the Phlx advance notice of any additions, deletions, modifications or substitutions of the stocks comprising the Index. In addition, before any changes to the composition of the Index can be made, the Phlx must review and approve them. The Exchange believes the requirement for advance notification of changes to the Index will be sufficient to allow the Phlx time to notify adequately the public of any changes, which, according to the license agreement, normally will be ten business days prior to any changes. Further, the Exchange has represented that it will give public notice of any changes to the composition of the Index at least ten business days prior to the change.[10]

D. Calculation of the Index

Even though the Index will be maintained by KBW, the Phlx represents that the Exchange will be solely responsible for the calculation of the Index and that the Index value will be calculated and disseminated in such a way that neither KBW nor any other party will be in receipt of the Index value prior to the public dissemination of the value. In this connection, the Phlx has made arrangements for the Index to be calculated by an independent third party, Bridge Data, a vendor of financial information. Bridge Data will calculate and disseminate the Index value to the Options Price Reporting Authority ("OPRA") four times per minute during the trading day, using the last sale prices of the component stocks in the Index.[11] OPRA, in turn, will disseminate the Index value to other financial vendors such as Reuters, Telerate, and Quotron. The Phlx also represents that

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inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 1, 1992.

[4] A European-style option only can be exercised during a limited period of time before the option expires.

[5] The calculation of a capitalization-weighted index involves taking the summation of the product of the price of each stock in the index and the shares outstanding for each issue. In contrast, the calculation of a price-weighted index involves taking the summation of the prices of the stocks in the index.

[6] Real-time last sale reporting recently has been extended to all securities traded over NASDAQ, however, NASDAQ/NMS securities, among other things, are subject to higher listing standards.

[7] *See* Phlx Letter, *supra* note 3.

[8] See Amendment No. 2, *supra* note 3. The Phlx's options listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) The public float must be at least 7,000,000; (2) there must be a minimum of 2,000 stockholders; (3) trading volume must have been at least 2.4 million over the preceding twelve months; and (4) the market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. See Phlx Rule 1009.

[9] See Amendment No. 1, *supra* note 3.

[10] See letter from Murray L. Ross, Secretary, Phlx, to Thomas Gira, Branch Chief, Options Regulation, SEC, dated September 2, 1992 ("Phlx September 2 Letter").

[11] In order to provide continuity for the Index's value in the event of any changes or replacements in the Index occurring as a result of mergers, acquisitions, or other activities which affect the Index's capitalization, the Index divisor will be adjusted accordingly.

the formula for calculating the Index will be publicized in Exchange marketing brochures and Exchange circulars to members.[12] The Index value was set at a starting value of 250 on October 21, 1991. As of September 2, 1992, the Index was at 217.

The Index value for purposes of settling outstanding Index option contracts upon expiration will be calculated based upon the regular way opening sale prices for each of the Index's component stocks in their primary market on the last trading day prior to expiration.[13] In the case of securities traded through the NASDAQ–NMS system, the first reported sale price will be used. Once all of the component stocks have opened, the value of the Index will be determined and that value will be used as the settlement value for the options. If any of the component stocks do not open for trading on the last trading day before expiration, then the prior trading day's (*i.e.*, Thursday's) last sale price will be used in the Index calculation. In this regard, before deciding to use Thursday's closing value of a component stock for the purpose of determining the settlement value of the Index, the Phlx will wait until the end of the trading day on expiration Friday.[14]

E. Contract Specifications

The proposed options on the Index will be cashed-settled, European-style options. Standard options trading hours (9:30 a.m. to 4:10 p.m. Eastern Standard Time) will apply to the contracts. The Index multiplier will be 100. In addition, pursuant to Phlx Rule 1012, there will be five expiration months outstanding at any given time. Specifically, there will be three expiration months from the March, June, September, and December cycle plus two additional near-term months so that the three nearest term months will always be available.

The options on the Index will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). Accordingly, since options on the Index will settle based upon opening prices of the component stocks on the last trading day before expiration (normally a Friday), the last trading day for an expiring Index option series will normally be the second to last business day before expiration (normally a Thursday).

F. Position and Exercise Limits, Margin Requirements, and Trading Halts

The proposal provides that Exchange rules that are applicable to the trading of options on narrow-based, industry indexes will apply to the trading of options on the Index.[15] Specifically, among others, Exchange rules governing margin requirements,[16] position and exercise limits,[17] and trading halt procedures,[18] that are applicable to the trading of industry index options will apply to options traded on the Index.

G. Surveillance

Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in options on the Index. These procedures include complete access to trading activity in the underlying securities. In addition, the Intermarket Surveillance Group Agreement ("ISG Agreement"), dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index.[19] Further, the Phlx's Licence Agreement with KBW provides that the Phlx shall have the right to review trading account information pertaining to positions in Index options and related instruments (*i.e.*, stocks included in or deleted from the Index and options on such stocks) in the possession of KBW regarding KBW, its affiliates and customers. In this regard, the Phlx represents that the term affiliates will include persons associated with KBW, consistent with the definition of associated persons in Section 3(a)(18) of the Act, as well as all employees of KBW.[20]

III. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[21] Specifically, the Commission finds that the trading of options on the Index will serve to protect investors, promote the public interest, and help to remove impediments to a free and open securities market by providing investors with a means to hedge exposure to market risk associated with securities in the banking industry. The Commission also believes that the trading of options on the Index will allow investors holding positions in some or all of the underlying securities in the Index to hedge the risks associated with their portfolios more efficiently and effectively.

The trading of options on the KBW Index, however, raises several concerns, namely issues related to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the Phlx adequately has addressed these concerns.

A. Index Design and Structure

The Commission finds that the Index is narrow-based because it is only comprised of 24 stocks, all of which are within the banking industry. Accordingly, the Commission believes it is necessary for the Phlx to apply its rules governing narrow-based index options to trading in the Index options.[22]

The Commission also finds that the large capitalizations, liquid markets, and relative weightings of the Index's component stocks significantly minimize the potential for manipulation of the Index. First, the overwhelming majority of the stocks that comprise the Index are actively traded, with a mean and median average daily trading volume of 336,075 and 759,660 shares,

[12] See Amendment No. 1, *supra* note 3.

[13] The last trading day prior to expiration is the third Friday of the expiration month. For a more detailed discussion of the trading days for the Index options, see *infra* Section II, E.

[14] For purposes of the daily dissemination of the Index value, if a stock included in the Index has not opened, the Phlx will use the closing value of that stock on the prior trading day when calculating the value of the Index, until the trading of the stock opens.

[15] See Phlx Rules 1000A–1103A.

[16] Pursuant to Phlx Rule 722, the margin requirements for the Index options will be: (1) For each short options positions, 100% of the current market value of the options contract plus 20% of the underlying aggregate index value, less any out-of-the-money amount, with a minimum requirement of the options premium plus 10% of the underlying index value; and (2) for long options positions, 100% of the options premium paid.

[17] Pursuant to Phlx Rule 1001A(b)(i) and 1002A, respectively, the position and exercise limits for the Index options will be 8,000 contracts, unless the Exchange determines, pursuant to Rules 1001A(b)(i) and 1002A that a lower limit is warranted.

[18] Pursuant to Phlx Rule 1047A, the trading on the Phlx of Index options will be halted or suspended whenever trading in underlying securities whose weighted value represents more than 10% of the Index value are halted or suspended.

[19] ISG was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates, the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990.

[20] See Phlx September 2 Letter, *supra* note 10, and letter from Murray L. Ross, Secretary, Phlx, to Thomas R. Gira, Branch Chief, Options Regulation, SEC, dated September 3, 1992 ("Phlx September 3 Letter").

[21] 15 U.S.C. 78f(b)(5)(1988).

[22] See *supra* notes 16–18 and accompanying text.

respectively.[23] Second, the market capitalizations of the stocks in the Index are very large, ranging from a high of $12.77 billion to a low of $552 million, with the mean and median being $3.88 billion and $6.66 billion, respectively. Third, although the Index is only comprised of 24 stocks, no particular stock or two or three stocks dominate the Index. Specifically, no one stock comprises more than 13.72% of the Index's total value and the percentage weighting of the three largest issues in the Index accounts for 33.36% of the Index's value.[24] Fourth, all of the component stocks in the Index currently are eligible for options trading.[25] Accordingly, the Commission believes it is unlikely that attempted manipulations of the prices of a small number of issues would affect significantly the Index's value.

The Commission also believes that the Phlx and KBW have developed several composition and maintenance criteria for the Index that will minimize the possibility that the Index could be manipulated through trading in less actively traded securities or securities with smaller prices or floats. First, under the License Agreement, KBW is required to give the Phlx advance notice of any changes in the composition of the Index and the Phlx is required to review and approve these changes. Second, at least 90% of the stocks in the Index must satisfy the options listing standards. Third, in the event that KBW and the Phlx determine to change the number of component issues in the Index to less than 15 or more that 30, the Phlx is required to submit a filing pursuant to section 19(b) of the Act to receive Commission approval to continue listing the Index options. Fourth, at a minimum, the Index will be reviewed annually to determine whether the stocks, as a group, represent a suitable proxy for the banking industry. Finally, KBW has represented that it will ensure that the Index maintains its representative sample of stocks from the various regions represented in the Index.

Lastly, the Commission notes that significant market integrity and customer protection concerns are raised when a broker-dealer, such as KBW, is involved in the development, maintenance, or calculation of a stock index that underlies an exchange-traded derivative product. Specifically, the Commission is concerned that the close involvement of a broker-dealer may result in the broker-dealer possessing significant informational advantages that can be exploited to engage in trading abuses, among other things. For several reasons, however, the Commission believes that the Phlx has adequately addressed this concern with respect to the Bank Index options. First, as noted above, the Licence Agreement provides that the Phlx shall have the right to review trading account information from KBW, its affiliates and customers pertaining to positions in Bank Index options and related instruments (*i.e.*, stocks included in or deleted from the Index and options on such stocks).[26] The Commission believes that access to this information is necessary for the Phlx adequately to detect and deter any trading abuses that may occur due to KBW's close involvement with the Index. Second, the Phlx has made arrangements for the Index to be calculated and disseminated by an independent third party, Bridge Data, in such a way that neither KBW nor any other party will be in receipt of the Index value prior to the public dissemination of the value. Third, the Licence Agreement provides that KBW will give the Phlx advance notice, subject to review and approval by the Phlx, regarding any changes in the composition of the Index. In addition, the agreement provides that such advance notice must be given long enough before the change so as to allow the Phlx time to give public notice of the change at least ten business days prior to the change. In this regard, the Phlx also has represented that it will ensure that the public is given notice of any change to the Index at least ten business days before the change.[27] The Commission believes that these procedures will help to ensure that KBW does not have any time advantage concerning advance knowledge of any modifications to the Index. Finally, the Exchange's existing surveillance procedures for stock index options will apply to the Index options and should provide the Phlx with adequate information to detect and deter trading abuses that may occur. Accordingly, the Commission believes the procedures developed by the Phlx will serve to reduce the likelihood that KBW could take advantage of material non-public information concerning the Index and that, if such action did occur, it could be readily detected.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Bank Index options, can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options will be subject to the same regulatory regime as the other standardized options currently traded on the Phlx, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Bank Index options.

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation. In this regard, the Phlx, the NASD, and the NYSE, along with other U.S. securities exchanges, are members of the Intermarket Surveillance Group ("ISG"), which provides for the exchange of all necessary surveillance information.[28] Further, the Phlx's Licence Agreement with KBW provides that the Phlx shall have the right to review trading account information pertaining to positions in Index options and related positions in the possession of KBW regarding KBW, its affiliates and customers.

D. Market Impact

The Commission believes that the listing and trading of Bank Index options on the Phlx will not adversely impact the underlying securities markets. First, as described above, the stocks contained in the Index have large capitalizations and are actively traded and no one stock or group of stocks

[23] For the six-month period between July 1991 and December 1991, all but four of the companies within the Index had an average daily trading volume grater than 30,000 shares per day. PHLX letter, *supra* note 3.

[24] For an index with a significantly greater number of stocks than 24 issues, the Commission might come to a different conclusion if these stocks accounted for 33% of the index's weighting.

[25] For a description of the options listing standards, see *supra* note 8.

[26] As noted earlier, the Phlx represents that the term "affiliates" in the Licence Agreement includes persons associated with KBW, consistent with the definition of the term associated persons in Section 3(a)(18) of the Act, as well as all employees of KBW. See *supra* note 20 and accompanying text.

[27] *See* Phlx September 2 Letter, *supra* note 10.

[28] See *supra* note 19.

dominates the Index. Second, because 90% of the value of the Index must be accounted for by stocks that meet the options listing standards, the component securities generally with be actively-traded, highly-capitalized stocks. In fact, as noted above, all the stocks currently in the Index meet the options listing standards. Third, existing Phlx stock index options rules and surveillance procedures will apply to the Index options. Fourth, the 8,000 contract position and exercise limits will serve to minimize potential manipulation and other market impact concerns. Fifth, the risk to investors of contra-party non-performance will be minimized because the Index options will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded on a national securities exchange in the United States. Lastly, the Commission believes that settling expiring Bank Index options based on the opening prices of component securities is reasonable and consistent with the Act because it may contribute to the orderly unwinding of Index options positions upon expiration.

The Commission finds good cause for approving Amendment Nos. 1, 2 and 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. First, Amendment No. 1 requires the Exchange to submit a rule filing with the Commission pursuant to section 19(b) of the Act if the Exchange proposes to modify the number of stocks in the Index to greater than 30 less than 15. The Commission believes that this proposal does not raise any new regulatory issues and it is designed to ensure that the composition of the Index will not change significantly without public comment and Commission review. Second, Amendment No. 2 requires that at least 90% of the Index's numerical index value be accounted for by stocks that meet the options listing standards. The Commission believes that this modification strengthens the integrity of the Index and does not raise new issues. Moreover, the Commission finds that this modification to the proposal is designed to reduce the likelihood that the Index could be susceptible to manipulation. Third, Amendment No. 3 provides that the final settlement value of expiring Index options will be based on the opening prices of the component stocks on the trading day prior to expiration, instead of their closing prices. The Commission believes that this contract design modification, while significant in terms of the potential market impact of the Index options, does not alter significantly the contract design specifications of the Index options contracts. Moreover, the Commission believes that this modification may contribute to the orderly unwinding of positions in Index options and related positions, thereby helping to ensure that the trading of Bank Index options will not have any adverse market impacts. Therefore, the Commission believes it is consistent with sections 6(b) and 19(b)(2) of the Act to approve Amendment Nos. 1, 2 and 3 to the Phlx's proposal on an accelerated basis.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[29] that the proposed rule change (SR–Phlx–91–27) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Jonathan G. Katz,

Secretary.

[FR Doc. 92–21744 Filed 9–9–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31143; International Series Release No. 450; File No. SR–PHLX–92–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to New Foreign Currency Options Floor Procedure Advice (FF–17) Defining the Perimeters of the Trading Pit Areas

September 3, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 6, 1992, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend its rules by adding a new Foreign Currency Options Floor Procedure Advice ("OFPA") FF–17 entitled "Foreign Currency Options ("FCO") Trades to be Effected in the Pit." The proposed OFPA will require each bid and offer represented for execution on the FCO floor to be voiced loudly and audibly in the option's trading pit. For purposes of OFPA FF–17, the proposal defines "trading pit" as "the common area immediately in front of the respective option post and, in case of an active trading crowd, all common areas immediately adjacent thereto necessary to contain such crowd." In addition, for any trading segment,[1] the proposal also authorizes a floor official to extend the boundaries of a trading pit to include other common areas available on the floor for trading, except booth spaces and the aisles between the booth spaces. The OFPA includes the following fine schedule for violations of its provisions: (1) $100 for the first occurrence; (2) $500 for the second occurrence; and (3) a sanction discretionary with the Business Conduct Committee ("BCC") for the third occurrence. The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed OFPA will require each bid and offer represented for execution on the FCO floor to be voiced loudly and audibly in the option's trading pit. For purposes of OFPA FF–17, the proposal defines "trading pit" as "the common area immediately in front of the respective option post and, in case of an active trading crowd, all common areas immediately adjacent thereto necessary to contain such crowd." For any trading segment, the proposal authorizes a floor official to extend the boundaries of a trading pit to include other common areas available on the floor for trading, except booth spaces and the aisles between the booth spaces.

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[29] 15 U.S.C. 78s(b) (1988).

[30] 17 CFR 200.30–3(a)(12) (1990).

[1] The PHLX expanded its foreign currency options trading hours on September 20, 1990, in order to coincide with the afternoon business hours in Japan and the Far East. The foreign currency options trading hours on the Exchange are 18 hours in duration lasting from 7 p.m. to 11 p.m. (EDT) and 12:30 a.m. to 2:30 p.m. (EDT). *See* Securities Exchange Act Release No. 28470 (September 25, 1990), 55 FR 40253.

The PHLX explains that the purpose of the proposed rule change is to define the perimeter of the trading pit areas and to police its enforcement through the minor disciplinary plan procedures. The proposal originated as an FCO night trading session issue to accommodate the various needs of the participants on the floor during the session. However, the Exchange concluded that the question of defining the trading pit was important to all FCO segments; accordingly, the proposal extends to all FCO trading segments. The proposal rule change is designed to reconcile the controversy between (1) traders situated in the common pit areas fronting the rows of broker booths who may be at risk of missing orders which emanate from the floor broker booths, and (2) floor brokers who want to remain on the telephone with a customer while an order is represented.

The PHLX states that the proposal will restrict the execution of orders from broker booths but will not thoroughly restrict the ability of a trading pit to contract or expand into adjacent common areas while activity fluctuates. Under the proposal, a floor official may extend for any trading segment the boundaries of a trading pit to include other common areas available on the floor for trading, except the booth spaces and the aisles between those spaces. Moreover, floor brokers will continue to have the option to shout their orders to two-dollar brokers who can then represent the order in the crowd.

The PHLX believes that the proposed rule change is consistent with the Act, in general, and with section 6(b)(5), in particular, in that it is designed to, among other things, prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, facilitating transactions in securities. In addition, the PHLX believes the proposal is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 1, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21745 Filed 9-9-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18926; 812-7478]

The Idaho Company; Notice of Application

September 3, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Idaho Company.

RELEVANT ACT SECTIONS: Exemption requested from section 7, pursuant to sections 6(c) and 6(e), subject to and conditioned upon compliance with sections 9, 10, 15, 16(a), 17(g), 17(i), 18, 21, 23, 35, 36, 37, and, to the extent necessary to enforce the provisions of the Act, sections 38 through 53. In addition, applicant seeks an exemption from certain provisions of rule 17g-1.

SUMMARY OF APPLICATION: Applicant is a business and industrial development corporation licensed and regulated under Idaho law. Applicant was organized to foster economic development in the state of Idaho by making loans to and investments in small developing companies. Applicant seeks to be exempt from registration as an investment company, and has agreed to comply with certain provisions of the Act.

FILING DATES: The application was filed on February 9, 1990 and amended on December 19, 1990, July 16, 1991, April 9, 1992, and August 27, 1992. Applicant has agreed to file a further amendment during the notice period. This notice reflects the changes to be made to the application by such amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 29, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing request should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, P.O. Box 6812, Boise, Idaho 83707.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272–2511, or C. David Messman, Branch Chief, (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant was incorporated under the laws of Idaho in 1986 to stimulate, develop, and advance the business prosperity of Idaho and its citizens. In 1989, the Idaho legislature passed the Idaho Business and Industrial Development Corporation Act (the "Idaho BIDCO statute"). The Idaho BIDCO statute promotes economic development in Idaho by the creation of business and industrial development corporations ("BIDCOs") to help meet the financial and management needs of Idaho businesses. On July 11, 1989, applicant was licensed as Idaho's first BIDCO.

2. The Idaho BIDCO statute and applicant's licensure thereunder are part of an economic development strategy for the state of Idaho to aid new, emerging, and expanding businesses. To achieve this purpose, applicant engages in debt financing, equity financing, and leasing transactions with businesses that may be unable to obtain conventional bank financing. It is anticipated that applicant will invest principally in loans of up to ten years duration. Because applicant will make only equity investments in and loans to closely-held firms that are not listed on any organized exchange, applicant's equity ownership in firms will not be evidenced by freely tradeable shares. In the event of ownership evidenced by stock, under no circumstances will stock be delivered blank or held in bearer form or street name. Consistent with its stated purpose, applicant will only provide financing to and invest in entities doing or proposing to do business in Idaho.

3. Applicant is governed by a board of directors elected by its shareholders. Each shareholder has one vote for each share held and shareholders elect all directors. Loans and equity investments must be approved by applicant's executive committee of seven directors appointed by the board.

4. Applicant's sources of revenue are interest income on loans and investments and fees charged for services rendered in providing assistance to Idaho businesses.

5. As a BIDCO, applicant is registered under and regulated by the Idaho BIDCO statute. Applicant is subject to reporting, record keeping, auditing, and minimum net worth requirements. The Idaho BIDCO statute requires a BIDCO's directors and officers to be of good character. The Director of the Department of Finance of the State of Idaho must approve any dividend policy adopted by a BIDCO and is empowered to enforce the provisions of the Idaho BIDCO statute. The Idaho BIDCO statute also limits the ability of a BIDCO to control other companies, and, for business transactions that involve potential conflicts of interest, requires the transactions to be on terms at least as favorable to the BIDCO as if the transaction did not involve a potential conflict of interest.

6. In order to raise funds to finance its operations, applicant made a public offering and a private placement of its securities in 1988. Of applicant's 467 shareholders purchasing stock in the public offering, 93% are Idaho residents, and businesses hold 83% of those shares. Another 10% of the publicly-held shares are owned by business owners, senior executives of large Idaho businesses, and employees of major corporations. Approximately 4% of the public shares were purchased by residents of towns immediately bordering Idaho or by large corporations having substantial business interests in the state. Less than 3% of the shares were purchased by persons who have since moved out of the state. In the private placement, a total of 95,500 shares were issued to 13 large Idaho-based companies that were accredited investors as defined by rule 501(a)(3) of Regulation D under the Securities Act of 1933. Through June 30, 1992, applicant had issued a total of 163,453 shares at $10.00 per share in the public offering and private placement. No further offerings currently are contemplated.

7. Although applicant is a for-profit corporation, profitability is not its primary goal. For this reason, applicant expected only persons interested in its public purpose would purchase its securities. Dividends are considered to be in the form of new jobs created and increased economic activity throughout the state. Applicant's prospectus also indicated that because of the civic nature of applicant, profit-oriented operation could not be guaranteed, dividends might never be paid, and there might never be a market for its stock.

8. Applicant has a "dormant funds policy" whereby funds not immediately employed in the making of loans and equity investments are invested in FDIC-insured certificates of deposit, U.S. Government securities, and obligations of U.S. Government agencies. Pursuant to its dormant funds policy, applicant invests primarily in certificates of deposit purchased through Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"). Such purchases are paid for by funds on deposit in a Cash Management Account ("CMA") maintained with Merrill Lynch. When investments purchased through Merrill Lynch mature, Merrill Lynch automatically deposits the principal and interest in applicant's CMA account.

9. Applicant also maintains a safe deposit box and a checking account with West One Bank, Idaho, N.A. All local certificates of deposit, loan documentation, and stock certificates are held in the safe deposit box. The agreements for the holding of securities and cash at Merrill Lynch and in the safe deposit box and checking account have been approved by applicant's Board of Directors.

10. Applicant seeks an exemption from section 17(f), the custody requirements of the Act. In support of its exemption request, applicant has agreed to maintain its cash and securities according to certain safekeeping procedures set forth in Condition 2 below.

11. Applicant will comply with section 17(g) of the Act and rule 17g–1 thereunder, except that applicant will maintain a fidelity bond with a deductible clause. Rule 17g–1 requires each registered investment company to maintain a fidelity bond against larceny and embezzlement covering each officer and employee of the investment company who may singly, or jointly with others have access to securities or funds of the investment company. Applicant believes that the cost of a policy without a deductible clause would be unreasonable in relation to the financial assets of applicant. Applicant therefore requests partial exemption from rule 17g–1 to allow it to maintain a fidelity bond with a $5,000 deductible.

12. Applicant also seeks an exemption from the affiliated transaction provisions of sections 17(a), 17(d), and 17(e) of the Act. The Idaho BIDCO statute provides extensive regulation of activities that may create a potential conflict of interest. In particular, any transaction engaged in by a BIDCO that creates a potential conflict of interest must be on terms and conditions no less favorable to the BIDCO than would be required in the ordinary course of business if the transaction did not involve a potential conflict of interest. Certain other transactions are

prohibited by the Idaho BIDCO statute unless the Director of the Department of Finance of the State of Idaho approves an order exempting a BIDCO from the prohibitions. In so doing, the Director must find that the exemption is in the public interest and that the regulation of the transaction is not necessary for the purposes of the Idaho BIDCO statute. Applicant submits that such state regulation provides an appropriate substitute for the protections sought for investors under sections 17(a), 17(d), and 17(e).

Applicant's Legal Analysis

1. Section 3(a)(3) of the Act defines the term "investment company" to include any issuer that "is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." Applicant concedes that by making loans and investments in Idaho businesses its holdings of investment securities may exceed the 40% test set forth in section 3(a)(3).

2. Section 6(c) of the Act provides that the Commission may exempt any person or transaction from any and all provisions of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 6(e) permits the Commission to provide, in exempting an investment company from registration pursuant to section 7, that specified sections will apply to the company, and all other persons in their dealings with the company, as if the company were registered under the Act.

3. Applicant seeks an order, pursuant to sections 6(c) and 6(e) or the Act, exempting the applicant from section 7 subject to and conditioned upon compliance with sections 9, 10, 15, 16(a), 17(g), 17(i), 18, 21, 23, 35, 36, 37, and, to the extent necessary to enforce the provisions of the Act, 38 through 53 of the Act. In addition, applicant would be exempted from certain provisions of rule 17g–1. Applicant submits that because of the state regulation to which it is subject and the public purpose for which it is organized, it is not necessary or appropriate for it to be subject to many of the provisions of the Act or the rules thereunder, other than the sections cited above.

4. Although applicant differs from other BIDCOs that have been granted exemptions from all provisions of the Act because it made a public offering of its securities, applicant asserts that it is organized for the same public purposes as other BIDCOs that have been granted exemptions. Applicant further asserts that it is subject to comprehensive state regulation that provides sufficient protection for investors to warrant a partial exemption from the Act, and that it would be unduly burdensome for applicant to comply with the Act.

5. Applicant submits that the system of licensing, regulation, and enforcement provided by the Idaho BIDCO statute, together with the provisions of the Act to which applicant will be subject, is sufficient to protect investors. Applicant thus asserts that an exemption under sections 6(c) and 6(e) of the Act is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

Applicant's Conditions

Applicant agrees that the order of the Commission granting the requested relief will be subject to the following conditions:

1. Applicant will not lend to or invest in any shareholder owning a five percent or greater interest in applicant. Applicant will not lend to or invest in any entity of which any director or officer of applicant is an affiliated person, as defined in section 2 of the Act, unless: (i) Such affiliation arises solely from such director or officer of applicant being an officer, director, partner, or employee of the entity, or (ii) the Director of the Idaho Department of Finance (pursuant to chapter 27, section 26–2730(9) of the Idaho Code, Business and Industrial Development Corporations) grants applicant an order exempting the loan or investment from the conflict of interest prohibitions of section 26–2730.

2. Applicant will maintain its cash and securities according to the following procedures:

(a) All securities and cash will be maintained in accounts with, or in the safekeeping of, banks (as defined in section 17(f) of the Act), or members of a national securities exchange (collectively, a "safekeeper") pursuant to written agreements ("Safekeeping Agreements") that will be approved initially, and will be reviewed and reapproved annually, by the Board of Directors of applicant.

(b) Any Safekeeping Agreement will provide that access to securities and cash (including any withdrawal of funds by check or otherwise) of applicant will be restricted to two Access Persons (as defined below) jointly, except as provided in paragraph (e), below.

(c) Except as otherwise provided by law, no person will be authorized or permitted to have access to the securities and cash deposited in accordance with paragraph (a) except pursuant to a resolution of the Board of Directors of applicant. Such resolution will designate not more than five persons, who will be either officers or responsible employees of applicant, and will provide that access to such securities and cash will be had only by two or more such persons jointly, at least one of whom will be an officer ("Access Persons"); except that access to such securities and cash will be permitted (i) to properly authorized officers and employees of the safekeeper holding such securities and cash, and (ii) to an independent public accountant, jointly with an Access Person or authorized officer or employee of the safekeeper, for the purposes of such accountant's examination of the assets of applicant. Such securities and cash will also at all times be subject to inspection by the SEC through its authorized employees or agents.

(d) Each person depositing or withdrawing (including withdrawals by check) securities or cash to or from any account or safekeeping arrangement of applicant, will sign a notation with respect to such deposit or withdrawal that will show (i) the date and time of the deposit or withdrawal, (ii) the manner of acquisition of the securities or cash deposited or the purpose for which they have been withdrawn, (iii) if securities, the title and amount of the securities deposited or withdrawn, and an identification thereof by certificate numbers or otherwise, and (iv) if withdrawn and delivered to another person, the name of such person. Such notation will be transmitted promptly to an officer or director of applicant designated by its Board of Directors who will not be an Access Person. Such notation will be on serially numbered forms and will be preserved for at least one year.

(e) All check disbursements will be made payable to a designated payee. Notwithstanding paragraphs (b) and (c), checks or cash disbursements in a maximum amount of $500 for authorized petty cash may be signed or authorized on the basis of one signature of an Access Person. If petty cash is withdrawn by check, such check will be made out to the order of "(Named Person) Petty Cashier."

(f) A person other than a person who disburses or authorizes disbursements of cash will be designated by the Board

of Directors of applicant to receive the account statements for any account maintained pursuant to paragraph (a) and will reconcile such statements monthly.

(g) Applicant will have a system reasonably designed to prevent unauthorized instructions to be given to any safekeeper. Such system will be approved by applicant's Board of Directors.

(h) A safekeeper will have no power or authority to assign, hypothecate, pledge, or otherwise dispose of any securities and investments except pursuant to applicant's direction and for applicant's account.

(i) All securities and cash held by or on behalf of applicant will be subject to a complete examination by an independent public accountant at least once during each fiscal year.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-21684 Filed 9-9-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18925; File No. 812-8034]

Pacific Corinthian Life Insurance Co., et al.

September 2, 1992.

AGENCY: Securities and Exchange Commission (the "Commissioner" or "SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Pacific Corinthian Life Insurance Company ("Pacific Corinthian") and Pacific Corinthian VIP Separate Account of Pacific Corinthian Life Insurance Company ("PCL Separate Account") (collectively, the "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act for exemptions from sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2)(C), 27(c)(2), and 27(d) of the 1940 Act and Rule 22c-1 thereunder. Also, order requested under section 17(b) of the 1940 Act for an exemption from section 17(a) of the 1940 Act and under section 17(d) of the 1940 Act and Rule 17d-1 thereunder approving the proposed transaction, and under section 11 of the 1940 Act approving the proposed offer of exchange.

SUMMARY OF APPLICATION: Applicants seek an order permitting the assessment and deduction of a mortality and expense risk charge from the assets of the PCL Separate Account under certain individual flexible deferred annuity and variable accumulation contracts (the "Contracts") and the assessment of a contingent deferred sales charge under those Contracts. Applicants also seek an order permitting the transfer of assets from the Shearson VIP Separate Account of First Capital Life Insurance Company—In Conservation ("FCL Separate Account") to the PCL Separate Account and an order permitting an offer of exchange of interests in the FCL Separate Account for interests in the PCL Separate Account.

FILING DATE: The Application was filed on August 6, 1992 and amended on August 28, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 24, 1992, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549. Applicants, 700 Newport Center Drive, Newport Beach, California 92660.

FOR FURTHER INFORMATION CONTACT: Thomas E. Bisset, Attorney, at (202) 272-2058 or Wendell M. Faria, Deputy Chief, at (202) 272-2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Pacific Corinthian is a newly-formed stock life insurance company organized under the laws of the State of California. Pacific Corinthian is qualified to conduct business as a life insurance company under the laws of the State of California and is currently seeking qualification under the laws of other states deemed appropriate and necessary by its officers. Pacific Corinthian is a wholly-owned subsidiary of Pacific Mutual Life Insurance Company ("Pacific Mutual").

2. Pacific Mutual Life Insurance Company ("Pacific Mutual") is a mutual life insurance company organized under the laws of the State of California. It was authorized to conduct business as a life insurance company on January 2, 1868, as Pacific Mutual Life Insurance Company of California, and was reincorporated under its present name on July 22, 1936.

3. Pursuant to a resolution of its Board of Directors, Pacific Corinthian established the Pacific Corinthian VIP Separate Account (the "PCL Separate Account") as a separate account under California law. The PCL Separate Account is divided into subaccounts referred to as Variable Accounts. Pursuant to California law, the income and capital gains or losses of each Variable Account, whether realized or not, are credited to or charged against the assets held in that Variable Account, without regard to the income or capital gains or losses of any other Variable Account or of Pacific Corinthian's general account. The assets of the PCL Separate Account are not chargeable with liabilities arising out of any other business conducted by Pacific Corinthian. However, all obligations arising out of any variable contract issued (or assumed) by Pacific Corinthian and funded by the PCL Separate Account will be general corporate obligations of Pacific Corinthian. The PCL Separate Account is registered with the Commission as a unit investment trust on Form N-4 (File No. 33-50394).

4. Pacific Mutual organized Pacific Corinthian in connection with its plan for the rehabilitation of First Capital Life Insurance Company—In Conservation ("First Capital"). First Capital, a stock life insurance company domiciled in California, was placed in conservation on May 14, 1991, by order of the Superior Court of the State of California for the County of Los Angeles (the "Conservation Court"). The Conservation Court's order appointed the Insurance Commissioner of the State of California (the "Insurance Commissioner" or "Conservator") as Conservator of First Capital, and vested the Conservator with all title to First Capital's assets, exclusive jurisdiction of its property and any claims or rights respecting such property, and authority to conduct First Capital's business.

5. On July 1, 1992, the Conservation Court accepted the Conservator's recommendation and approved Pacific Mutual's rehabilitation plan. The rehabilitation plan will be effected through an agreement entered into between the Conservator of First Capital

and Pacific Mutual ("Rehabilitation Agreement"), dated as of July 28, 1992, in connection with the rehabilitation of First Capital.

6. Prior to being placed in conservation, First Capital offered an individual flexible premium deferred annuity and variable accumulation contract ("FCL VIP Contract"). The FCL VIP Contracts provide both a variable accumulation option and a fixed accumulation option during the Accumulation Period, and only a fixed option after the Annuity Date. The variable accumulation option is funded by the Shearson VIP Separate Account of First Capital Life ("FCL Separate Account"). The FCL Separate Account is registered under the 1940 Act as a unit investment trust. Interests in the FCL Separate Account are registered as securities under the Securities Act of 1933 (the "1933 Act") (File No. 2–84183). The FCL Separate Account is divided into subaccounts, called Variable Accounts. The FCL Separate Account currently consists of nine Variable Accounts, each of which invests in a Series of the Shearson VIP Fund ("VIP Fund").

7. The FCL VIP Contracts provide a death benefit upon the death of the Annuitant or Owner. Upon the death of the Annuitant on or before the fifth contract anniversary and before the Annuity Date, the Company will pay the Beneficiary or Beneficiaries a death benefit equal to the greater of (1) the aggregate premium payments less any reductions in the Contract Value due to withdrawals or (2) the Contract Value next determined following receipt of due proof of death by the Company at its home office. After the fifth contract anniversary, there is a minimum guaranteed death benefit equal to the death benefit as of the next previous Milestone Date (the fifth contract anniversary and each fifth anniversary thereafter), increased by any premiums paid since that Milestone Date and decreased by any withdrawals, net of contingent deferred sales charge, received since that Milestone Date. After the fifth anniversary, the death benefit proceeds will be the Contract Value, or, if larger, the minimum guaranteed death benefit.

8. The Rehabilitation Agreement provides that Pacific Corinthian will assume the life insurance policies and annuity contracts issued by First Capital including the FCL VIP Contracts, and will assume certain of the assets and certain liabilities of First Capital. This assumption will be effected by an Assumption Reinsurance Agreement between the (i) Insurance Commissioner of the State of California, as Conservator of First Capital, (ii) Pacific Corinthian, and (iii) Pacific Mutual. Upon closing on the Assumption Reinsurance Agreement ("Reinsurance Closing"), The First Capital life insurance policies and annuity contracts, including the FCL VIP Contracts, and the above-described assets and certain liabilities of First Capital will be transferred to Pacific Corinthian. The assets of the FCL Separate Account will be transferred intact to the PCL Separate Account. The Reinsurance Closing is subject to governmental approvals.

9. The Rehabilitation Agreement provides that owners of life insurance policies and annuity contracts issued by First Capital, including Owners of the FCL VIP Contracts, may elect to participate in the Rehabilitation Plan and "opt in," or elect not to participate in the Plan and "opt out". Pursuant to the Rehabilitation Agreement, this election will be described in a notice of election, which will be sent to owners of First Capital's policies and contracts, including Owners of the FCL VIP Contracts. In addition, Pacific Corinthian will provide Owners of the FCL VIP Contracts with the prospectus for the PCL Separate Account, which will describe the FCL VIP Contracts as modified under the Rehabilitation Agreement and assumed by Pacific Corinthian ("PCL VIP Contracts"). Any Owner of the FCL VIP Contracts who opts into the Rehabilitation Plan will be deemed to have agreed to the terms of his or her Contract as restructured pursuant to the Rehabilitation Agreement, and to have agreed to the assumption of his or her Contract by Pacific Corinthian. Any Owner of the Variable Annuity Contracts who does not opt out of the Rehabilitation Plan will be deemed to have opted in.

10. The FCL VIP Contracts of Owners who opt in to the Rehabilitation Plan will be modified in certain respects prior to their assumption by Pacific Corinthian. The modifications relate primarily to the Fixed Account; however, some modifications affect Contract Owners with Accumulation Value in the FCL Separate Account. For example, Contract Owners will no longer be permitted to transfer Accumulation Value from any of the Variable Accounts of the FCL Separate Account to the Fixed Account, or from the Fixed Account to any of the Variable Accounts. Transfers will continue to be permitted among the Variable Accounts. In addition, the annuity options under the Contract will be modified for Contract Owners with any Accumulation Value in the Fixed Account, including Contract Owners with Accumulation Value allocated to both the Fixed Account and the Separate Account so that annuity payments must be made over a period of at least seven years. The seven year minimum will not apply to Contract Owners with all of their Contract Value in the Separate Account. The Rehabilitation Agreement provides that Contract Owners who opt in to the Plan will receive an endorsement from First Capital that implements these modifications.

11. After the Reinsurance Closing, Applicants currently intend that the PCL Separate Account will continue to invest in the VIP Fund, and Applicants do not currently intend to recommend any change in the investment adviser or sub-advisers to the VIP Fund. On or before closing on the Rehabilitation Agreement ("Rehabilitation Closing"), it is anticipated that Pacific Corinthian will succeed First Capital as Manager of the VIP Fund.

12. After the Reinsurance Closing, the PCL VIP Contracts will have the same terms as the FCL VIP Contracts did before the closing (as modified pursuant to the Rehabilitation Agreement), except that the insurance company responsible for providing the benefits under the contract will be Pacific Corinthian. The charges under the PCL VIP Contracts with respect to amounts allocated for variable accumulation will be the same as for the FCL VIP Contracts, and they are described below as they pertain to the PCL VIP Contracts after the Reinsurance Closing.

13. A charge equal to 1.19% per year of each Variable Account's average daily net assets will be accrued daily and paid quarterly in order to reimburse Pacific Corinthian for undertaking the mortality and expense risks in connection with amounts subject to variable accumulation. Of the total annual charge, approximately 1.00% is attributable to the mortality risk and .19% is attributable to the expense risk.

14. Pacific Corinthian will assume an expense risk because of its guarantee that the ordinary expenses borne directly by the PCL Separate Account will not exceed .25% of average daily net assets on an annual basis. Pacific Corinthian further guarantees that the ordinary operating expenses of a Variable Account together with operating expenses incurred by the underlying Series Of the VIP Fund, exclusive of advisory and management fees, interest, taxes and brokerage commissions, transaction costs or extraordinary expenses, will not exceed

.60% of average daily net assets annually after consideration for any adjustment by the adviser (or manager) for fund expenses in excess of state expense limitations.

15. Pacific Corinthian will assume certain mortality risks from (i) its guarantee that during the Accumulation Period, and on or before the fifth Contract Anniversary, the death benefit will be at least equal to the aggregate premium payments received under the Contract, less any reductions in the Contract Value caused by withdrawals, and after the fifth contract anniversary, the death benefit proceeds will be the Contract Value, or if larger, the minimum guaranteed death benefit as described above, and (ii) its guarantee that annuity payments will not be affected by a change in mortality experience from the mortality assumptions used in connection with the annuity options provided under the Contract.

16. Each PCL VIP Contract will be assessed an annual contract maintenance charge of $30.00 during the Accumulation Period. This charge is to pay for administrative expenses related to the maintenance of each Contract, rather than the expense of administration of the PCL Separate Account. The contract maintenance charge is not guaranteed and may be increased in future years to the extent consistent with application law, including Rule 26a–1 under the 1940 Act. Pacific Corinthian does not anticipate that it will make any profit on the contract maintenance charge.

17. Any premium taxes with respect to the Contract will be paid by Pacific Corinthian when due and deducted from the Contract Value as of the annuity date if the contract is annuitized. However, if state law does not permit postponement of the deduction of premium taxes until annuitization, premium taxes will be deducted from premiums when received.

18. A Contingent Deferred Sales Charge may be imposed on a partial or complete withdrawal of the Contract Value allocated to the Separate Account during the Accumulation Period and on annuitization. Where there is a partial withdrawal, the Contingent Deferred Sales Charge is deducted from the remaining Accumulation Value under the Contract. Where there are insufficient funds in the Contract Value to cover the Contingent Deferred Sales Charge, the charge is deducted from the amount withdrawn. One withdrawal per Contract year will be exempt from any Charge, provided the amount of such withdrawal does not exceed 10% of the Contract Value at the time of such withdrawal.

When imposed, the Contingent Deferred Sales Charge is at the rate of 5% of the amount subject to the charge in the first Contribution Year of a premium payment, and declines by 1% in each subsequent Contribution Year of the applicable premium payment, so that there is no charge applied to withdrawal of amounts attributable to premium payments in the sixth Contribution Year and thereafter. For purposes of determining whether the Contingent Deferred Sales Charge will be imposed and, if so, the amount of the Charge, it is assumed that the initial source of a withdrawal is the earliest premium payment, even if that payment was allocated to an Account (including the Fixed Account) other than the Account from which the withdrawal is made. After consideration for any withdrawal amount exempt from the charge, in no event may the aggregate withdrawal amounts on which Contingent Deferred Sales Charges are imposed exceed the aggregate premium payments under the Contract. Consistent with the provisions of Rule 11a–2(d) of the Act, any applicable Contingent Deferred Sales Charge will be calculated as if the Contract had been issued by Pacific Corinthian as of the day when the Contract was issued by First Capital.

The Contingent Deferred Sales Charge also applies to any annuitization where the Contract Value includes an amount attributable to a premium payment for which the sixth Contribution Year has not been reached. The amount of the Charge will be determined in the same manner as for a withdrawal. However, the Charge will not be imposed on an annuitization if a Payment Plan offered under the Contract is elected or if the proceeds are applied to purchase a single premium immediate annuity then offered by Pacific Corinthian and the annuity payment period is five years or longer.

19. The PCL Separate Account will bear its own expenses, including fees and expenses for accounting and legal costs, data processing costs, registration fees, and expenses of preparation and distribution to Contract Owners of reports and prospectuses. Such expenses will be allocated among the Variable Accounts based on their relative net assets, unless they do not relate to all the Variable Accounts.

20. On the date of the Reinsurance Closing, First Capital will cede and transfer to Pacific Corinthian, and Pacific Corinthian will acquire and assume from First Capital, all life insurance policies and annuity contracts of First Capital, including the FCL VIP Contracts, that are in force on the closing date. In addition, Pacific Corinthian shall assume certain liabilities of First Capital as set out in the Assumption Reinsurance Agreement, which include liabilities related to life insurance policies and annuity contracts. First Capital shall also convey to Pacific Corinthian all of its rights, title, and interest to certain assets of First Capital. These assets shall include the assets in the FCL Separate Account which shall be transferred intact to the PCL Separate Account. The PCL Separate Account will have no assets prior to this intact transfer. Therefore, the assets of the PCL Separate Account immediately after the Reinsurance Closing shall be the same as the assets of the FCL Separate Account immediately before the closing, and each Contract Owner's Accumulation Value in the PCL Separate Account immediately after the Reinsurance Closing shall be funded by the same assets as immediately before the closing, and will be equal in value immediately before and after the Reinsurance Closing. In addition, Contract Owners will bear no expense in connection with their Accumulation in the FCL or PCL Separate Account, directly or indirectly, as a result of this assumption reinsurance transaction, including any brokerage or other transactional expenses.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any persons, securities, or transactions from any provision of the 1940 Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants request an order under section 6(c) for exemptions from sections 26(a)(2)(C) and 27(c)(2) to deduct a mortality and expense risk charge from the assets of the PCL Separate Account. Section 27(c)(2) of the 1940 Act prohibits the sale of periodic payment plan certificates unless the proceeds of all payments (except such amounts as are deducted for sales load) are held under an indenture or agreement containing in substance the provisions required by sections 26(a)(2) and (3). Section 26(a)(2)(C) provides that no payment to the depositor of, or principal underwriter for, a registered unit investment trust shall be allowed as

the Commission may prescribe, as compensation for performing bookkeeping or other administrative services. The Commission has taken the position that sections 27(c)(2) and 26(a)(2)(C) of the 1940 Act preclude assessing a mortality and expense risk charge against a Variable Account in the absence of exemptive relief.

3. Applicants represent that the mortality and expense risk charge under the PCL VIP Contracts should compensate reasonably the insurer for its assumption of mortality and expense risks. If the asset charge proves to be insufficient to cover the actual cost of the mortality and expense risk undertakings, Pacific Corinthian will bear the loss. Conversely, if the deduction is more than sufficient, Pacific Corinthian will realize a profit that will be available for any proper corporate purpose, including distribution expenses. Although Pacific Corinthian may ultimately realize a profit from the charge to the extent it is not needed to meet the actual expenses incurred, the aggregate charge is guaranteed and will never be increased. Applicants represent that the level of the mortality and expense risk charge imposed is within the range of industry practice for comparable annuity products. Applicants state that this representation is based upon their analysis of publicly available information regarding comparable contracts of other companies, taking into consideration the particular annuity features of the comparable contracts, including such factors as: annuity purchase rate guarantees, death benefit guarantees, other contract charges, the frequency of charges, the administrative services performed by the companies with respect to the contracts, the distribution methods, investment options under the contracts, and the tax status of the contracts. Applicants therefore request an exemption from the provisions of section 26(a)(2)(C) and section 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the mortality and expense risk charge. The Applicants undertake to make available to the SEC staff upon inspection of the PCL Separate Account's books and records and actuarial and other data used to establish the mortality and expense risk charge.

4. Applicants represent that they will maintain at their Home Office, and make available to the Commission, a memorandum setting forth in detail the comparable variable annuity products analyzed and the methodology, and results of, Applicants' comparable review. The Applicants also undertake that the PCL Separate Account will invest only in funds which undertake to have a board of directors with a disinterested majority that formulate and approve any plan under Rule 12b–1 to finance distribution expenses.

5. Applicants acknowledge that if the Contingent Deferred Sales Charge does not cover Pacific Corinthian's costs related to the distribution of the Contracts, if any, such costs will be paid from Pacific Corinthian's General Account, which may include any profit derived from the mortality and expense risk charge. Applicants represent that there is a reasonable likelihood that any distribution financing arrangement made with respect to the Contracts will benefit the Separate Account and the Contract Owners. Applicants represent that they will maintain at their Home Office, and make available to the Commission, a memorandum setting forth the basis for Pacific Corinthian's conclusion.

6. Applicants request exemptions from sections 2(a)(32), 2(a)(35), 27(d), 22(c) and Rule 22c–1 in order to deduct the Contingent Deferred Sales Charge under the PCL VIP contract. Section 2(a)(32) of the 1940 Act defines redeemable security as any security under the terms of which the holder is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof. Section 27(d) of the Act, in part, requires that the holder of a periodic payment plan certificate be able to surrender the certificate under certain circumstances with the recovery of certain front-end sales charge. Section 2(a)(35) of the Act, insofar as relevant, defines sales load as the difference between the price of a security to the public and that portion of proceeds from its sale which is received and invested or held for investment by the issuer.

Applicants submit that sections 2(a)(32), 2(a)(35) and 27(d) contemplate sales charges which are deducted from purchase payments at the time they are made only because that was the then current practice at the time those provisions were enacted. Applicants submit that for several reasons, the imposition of the Contingent Deferred Sales Charge is more preferable than a front-end charge deducted entirely from the initial premium. First, the amount of the Contract Owner's investment is not immediately reduced as it is when a front-end charge is deducted. Second, because of the contingent aspect of the Charge, Contract Owners may avoid it altogether.

7. Rule 22c–1, which was adopted pursuant to section 22(c) of the 1940 Act, prohibits a registered investment company issuing redeemable securities or a principal underwriter therefor from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security next computed after receipt of an order for purchase or tender for redemption. When a Contract Owner withdraws all or part of the Contract value from the PCL Separate Account during the Accumulation Period, the price on redemption will be based on the current net asset value next determined after receipt of the withdrawal request. As stated, the Contingent Deferred Sales Charge, if any, will merely be deducted at the time of withdrawal in arriving at the Contract Owner's proportionate share of the PCL Separate Account's current net assets. Applicants therefore request an exemption from the provisions of section 22(c) and Rule 22c–1 thereunder to the extent necessary to permit imposition of the Charge.

Consistent with the 9% limitation in Rule 11a–1(d)(b) of the 1940 Act, in no event will the charge imposed exceed 5% of the aggregate premium payments paid both before and after assumption of the Contracts by Pacific Corinthian. Further, consistent with Rule 11a–2(d)(1), any contingent charge will be calculated from the day the Contract was first issued by and premium payments made to, First Capital.

8. Applicants request an exemption from section 17(a) of the 1940 Act pursuant to section 17(b) because, to the extent that Pacific Corinthian and First Capital may be deemed to be affiliated by virtue of being under the common control of Pacific Mutual after the Rehabilitation Closing, the transaction would appear to be prohibited by section 17(a). Section 2(a)(3) of the 1940 Act defines "affiliated person" to include any person directly or indirectly under common control with such other person. Section 2(a)(9) of the 1940 Act defines control, as is relevant here, as the power to exercise controlling influence over the management or policies of a company. Section 17(a) of the 1940 Act prohibits any affiliated person or any affiliated person of such a person, acting as principal, from selling to or purchasing from a registered investment company, or any company controlled by such registered company, any security or other property. Section 17(b) of the 1940 Act provides, however, that the Commission, upon application, may exempt transactions from the provisions of section 17(a) if evidence establishes that the terms of the proposed transactions, including the

consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transactions are consistent with the policy of the registered investment company concerned and with the general purposes of the 1940 Act.

9. Applicants submit that the interests of Owners of the FCL Separate Account will not be adversely affected by the transfer of the assets and liabilities of the FCL Separate Account to PCL Separate Account. The proposed transfer will not result in any dilution of such Contract Owners' interests in the pertinent Separate Account, and will not result in any change in the assets underlying the Contract Value under the Contracts allocated for variable accumulation. Rather, the transfers will benefit such Contract Owners because they will look to Pacific Corinthian, the depositor of the PCL Separate Account, as reinsurer, to be responsible for the benefits under the PCL VIP Contracts rather than to an insurance company in conservation under state law. In addition, Contract Owners who do not wish to accept the plan for rehabilitation, including the assumption by Pacific Corinthian of the obligations under the Contracts, may elect to opt out of the plan. Accordingly, Applicants submit that the proposed transfer of the assets and liabilities of the FCL Separate Account to the PCL Separate Account is reasonable and fair, does not involve overreaching, and is consistent with the general purposes of the 1940 Act.

10. Both section 17(d) and Rule 17d–1 were intended to prohibit, or at least limit, conflicts of interest between affiliated persons entering into a joint transaction. Because Pacific Mutual has entered into the Rehabilitation Agreement with the Insurance Commissioner of the State of California, which sets forth the terms of the rehabilitation plan, and Pacific Mutual and Pacific Corinthian have entered into the Assumption Reinsurance Agreement with the Insurance Commissioner of the State of California, under which the assets of the FCL Separate Account will be transferred intact to the PCL Separate Account, the assumption reinsurance transaction may be deemed to be a joint transaction between Pacific Mutual, Pacific Corinthian, and The PCL Separate Account.

11. The Applicants submit that the proposed transaction does not create any conflicts of interest between Pacific Mutual, Pacific Corinthian, and the PCL Separate Account. Pacific Corinthian and the PCL Separate Account were, as stated above, specifically created for purposes of effecting the proposed transaction pursuant to an agreement to which the Insurance Commissioner of the State of California is a party and is part of a plan of rehabilitation that has been approved by the Conservation Court. This is not a transaction that is amenable to self-dealing by the affiliate of an investment company to the detriment of the investment company, and therefore it significantly differs from the type of "joint transactions" contemplated by the drafters of section 17(d) and of Rule 17d–1.

12. Finally, Applicants request an exemption from section 11 of the 1940 Act to permit the offer of exchange of interests in the FCL Separate Account for interests in the PCL Separate Account. Section 11 of the 1940 Act governs the exchange of securities of one investment company for another. Because FCL VIP Contract Owners will be given a right to "opt out" of, among other things, the assumption of their contracts by Pacific Corinthian and the resulting PCL VIP Contracts will be treated as new securities issued by a new investment company, the proposed assumption reinsurance arrangement may be deemed to be an offer of exchange for purposes of section 11 of the 1940 Act.

13. Section 11(a) was specifically designed to prevent the practices of "switching" and "reloading" whereby the holders of securities were induced to exchange their certificates for new certificates on which a new load would be payable. Since no charge will be assessed in connection with the assumption reinsurance of the Contracts by Pacific Corinthian with respect to Contract Value in the pertinent Separate Account, the principal abuse at which section 11(a) is directed will not be present. Moreover, Contract Owners will have the opportunity to allocate Accumulation Value among Variable Accounts of the PCL Separate Account that invest in the same series of the VIP Fund in which the Variable Accounts of the FCL Separate Account invest, and thus there will be no interruption in theVIP Fund serving as an investment medium for the Contracts before and after the transfer. Any applicable contingent deferred sales charge will be applied so that premiums are given credit for the time that the Contract was held by First Capital. Contract Owners who do not wish to accept the plan of rehabilitation may elect to opt out.

Applicants also represent that but for the absence of an affiliation between the FCL Separate Account and the PCL Separate Account at the time of the offer of exchange the Contracts would meet the conditions of, and the PCL Separate Account would comply with, Rule 11a–2. Accordingly, Applicants request an order pursuant to section 11 of the 1940 Act approving the offer of exchange involved in Pacific Corinthian's proposed assumption reinsurance of the Contracts.

Applicants' Conclusion

Applicants submit that the exemptions requested herein satisfy the standards of sections 6(c) and 17(b) of the 1940 Act, that the terms of the proposed joint transaction meet the standards of Rule 17d–1 under the 1940 Act, and that the terms of the exchange offer satisfies the standards of section 11, and request that the Commission issue an order granting the exemptions, approving the joint transaction, and approving the terms of the exchange offer as requested.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–21683 Filed 9–9–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 91–57; Notice 2]

Denial of Petition for Import Eligibility Determination

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration ("NHTSA") under section 108(c)(3)(C)(i)(I) of the National Traffic and Motor Vehicle Safety Act ("the Act"), 15 U.S.C. 1397(c)(3)(C)(i)(I), and 49 CFR part 593. The petition, which was submitted by Liphardt & Associates, Inc. of Ronkonkoma, New York ("Liphardt"), a Registered Importer of motor vehicles, requested NHTSA to determine that a 1989 Volvo 240 passenger car that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to the version of the 1989 Volvo 240 that was originally manufactured for importation into and sale in the United States and that was certified by its original manufacturer as complying with the safety standards, and (2) it is capable of being readily

modified to conform to all applicable federal motor vehicle safety standards.

NHTSA published a notice in the Federal Register on December 18, 1991 (56 FR 65777) that contained a thorough description of the petition, and solicited public comments upon it. One comment was received in response to this notice, from Volvo Cars of North America ("VCNA"), the U.S. subsidiary of Volvo Car Corporation of Gothenburg, Sweden, the vehicle's original manufacturer.

In its comment, VCNA contended, among other things, that modifications in addition to those specified in the petition would be necessary for a non-U.S. certified 1989 Volvo 240 to comply with Standard Nos. 101 *Controls and Displays*, 108 *Lamps, Reflective Devices and Associated Equipment*, 109 *New Pneumatic Tires*, 111 *Rearview Mirrors*, 208 *Occupant Crash Protection*, 209 *Seat Belt Assemblies*, and 301 *Fuel System Integrity*. VCNA asserted that a major structural modification, consisting of the installation of rear side member reinforcements and corresponding modifications to the rear axle calipers, would be necessary to conform a non-U.S. certified 1989 Volvo 240 to Standard No. 301. In view of this circumstance, VCNA contended that the vehicle cannot be regarded as "capable of being readily modified to conform to all applicable Federal motor vehicle safety standards," precluding it from being determined eligible for importation.

On February 27, 1992, NHTSA furnished Liphardt with a copy of VCNA's comments and accorded it an opportunity to respond. As of the date of this notice, Liphardt has failed to submit such a response. This has compelled NHTSA to conclude, from the state of the record, that the petition does not clearly demonstrate that the non-U.S. certified version of the 1989 Volvo 240 is eligible for importation. The petition must therefore be denied under 49 CFR 593.7(e).

In accordance with section 108(c)(3)(C)(ii) of the Act, 15 U.S.C. 1397(c)(3)(C)(ii), and 49 CFR 593.7(e), NHTSA will not consider a new import eligibility petition covering this vehicle until at least three months from the date of this notice.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.7; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 3, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-21665 Filed 9-10-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92-32; Notice 2]

Determination That Nonconforming 1990-1992 Citroen XM Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of determination that nonconforming 1990-1992 Citroen XM passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by the National Highway Traffic Safety Administration (NHTSA) that 1990-1992 Citroen XM passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being modified to comply with, all such standards.

DATE: The determination is effective as of the date of its publication in the September 10, 1992.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that:

(I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 (of the Act), and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards; or

(II) where there is no substantially similar United States motor vehicle * * * the safety features of the vehicle comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as (NHTSA) determines to be adequate.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. After it receives a petition, NHTSA publishes notice in the Federal Register to solicit comments from interested members of the public. Based on the comments that it receives, NHTSA may request supplemental information from the petitioner. Following close of the comment period, NHTSA reviews the petition, comments, and any supplemental information it receives, and then publishes its determination in the Federal Register.

Automative Research and Design, Inc., T/A CXA, of Middlesex, New Jersey (Registered Importer No. R-92-012) petitioned NHTSA to determine that 1990-1992 Citroen XM passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on July 7, 1992 (57 FR 29926) to afford an opportunity for public comment.

As stated in that notice, CXA contended in its petition that the Citroen XM is eligible for importation under section 108(c)(3)(A)(i)(II) of the Act, 15 U.S.C. 1397(c)(3)(A)(i)(II), because it has safety features that comply with, or are capable of being modified to comply with, all applicable Federal motor vehicle safety standards.

Specifically, the petitioner claimed that the 1990-1992 Citroen XM has safety features that comply with Standard Nos. 101 *Controls and Displays*, 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 108 *Lamps, Reflective Devices and Associated Equipment*, 109 *New Pneumatic Tires*, 110 *Tire Selection and Rims*, 111 *Rearview Mirrors*, 113 *Hood Latch Systems*, 114 *Theft Protection*, 115 *Vehicle Identification Number*, 116 *Brake Fluids*, 118 *Power-Operated Window Systems*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 208 *Occupant Crash Protection*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 214 *Side Door Strength*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

The petitioner also contended that the 1990-1992 Citroen XM complies with the

Bumper Standard found in 49 CFR part 581.

NHTSA requested the petitioner to supply further explanation and documentation to support its claims that the subject vehicle complies with Standard Nos. 104, 105, 108, 109, 110, 111, 201, 202, 203, 207, 208, 210, 216, and 302, and with 49 CFR part 581. The petitioner responded to this request by letters dated June 29, 1992, and July 15, 1992, which were placed in the public docket so that they could be reviewed by anyone wishing to comment on the petition.

One comment was received in response to the notice of petition, from Automobiles Citroen ("Citroen"), the original manufacturer of the Citroen XM. Citroen presented arguments challenging CXA's claims that the 1990–1992 Citroen XM conforms to a number of Federal standards. NHTSA invited CXA to respond to these arguments. The discussion below presents Citroen's arguments, and CXA's responses.

Standard No. 105: Citroen noted that to demonstrate that the 1990–1992 Citroen XM complies with this standard, CXA submitted a report of a test conducted on another vehicle, a 1987 Citroen CX 25 GTI, based on the belief that the two vehicles were equipped with a similar service brake system. Citroen contended that there are "significant differences" between the two systems, and expressed the opinion that a separate test should be conducted on the Citroen XM. The only difference cited by Citroen, however, was that the service brakes on the two vehicles did not utilize the same friction material. CXA responded that it conducted in-house testing that showed the service brake performance of the XM to be superior to that of the CX with respect to stopping distance, fade and recovery, the spike test, and stability within a 12-foot lane.

Standard No. 108: Citroen noted that the CXA merely listed and furnished photographs of the various lighting devices present on the Citroen XM, without submitting test reports to demonstrate compliance with photometric and environmental requirements specified in the standard. Based on the photographs, Citroen observed that CXA had modified the front headlights, but contended that other items of original lighting equipment require modification to comply with the standard, including the rear turn signal, the stop/tail lamps located on the rear fenders, and the tail lamps located on the trunk of the vehicle. CXA responded that the turn signal/stop/tail light assembly has the required "DOT" markings that indicate compliance with the standard for both the sedan and the station wagon version of the Citroen XM.

Standard No. 203: Citroen noted that CXA submitted results of impact tests that were conducted on a Citroen CX Prestige Turbo steering column assembly to demonstrate that the Citroen XM complies with this standard. Contrary to the assertions in CXA's petition that the two vehicles use the same steering wheel, Citroen contended that substantive differences exist between the two designs, and that separate testing on the XM's steering column assembly should therefore be conducted. CXA responded that the steering wheels on the two vehicles only differ with respect to their covering materials, and that they have the same basic construction and means of attachment to the steering column.

Standard No. 208: Citroen noted that CXA submitted results on a 30 mph perpendicular frontal barrier crash test, but provided no data to demonstrate compliance with the occupant crash protection requirements of paragraph S5.1 of the standard at angles within 30 degrees of the perpendicular, as Citroen believes is required under paragraph S4.1.2.1(a) of the standard, or to demonstrate compliance with paragraph S5.1 by means of a manual lap belt and automatic restraints, as Citroen believes is required under paragraph S4.1.2.1(c). CXA responded that there is no need for it to conduct an angular test, as paragraph S5.1(a) only specifies that such a test may be run as an alternative to the perpendicular impact test that CXA did conduct. CXA further contended that the data it submitted demonstrates that the Citroen XM complies with paragraph S4.1.2.1(c) by means of automatic restraints alone, and in such a circumstance it may be assumed that the use of manual lap belts could only improve the vehicle's occupant crash protection, precluding the need for it to submit data demonstrating compliance through use of both automatic and manual restraints.

Standard No. 210: Citroen noted that CZA based its statement that the Citroen XM complies with this standard on documents purporting to demonstrate compliance with ECE regulation 14. Citroen contended that this European standard is not equivalent to its American counterpart, particularly with respect to time limits for maintaining specified force levels in testing seat belt anchorages, which are 10 seconds in paragraph S5.1 of Standard No. 210, but 0.2 second in paragraph 6.3 of ECE regulation 14. CXA responded that it demonstrated that the Citroen XM conforms to this standard not only be comparing the standard's requirements to those of ECE regulation 14, but also by conducting in-house testing, as described in its letter of June 29, 1992 that was placed in the public docket.

Standard No. 302: Citroen noted that CXA based its statement that the Citroen XM complies with this standard on a document described as a "Certificate of Conformity" issued by Germany that shows the vehicle to be in compliance with ECE Standard 302, which CXA claimed is identical to Federal motor vehicle safety standard 302. Citroen disputed this claim on the basis that it did not certify the XM in Germany using ECE Standard 302, as the requirements of that standard are not applicable within Germany. Citroen contended that its vehicles meet ISO 3795 Recommended Practice and ECE Resolution #3, which it claimed are much less stringent than Standard No. 302, specifying a maximum combustion speed of 250 mm per minute (approximately 9.8 inches per minute), as opposed to the four inch per minute maximum combustion speed specified in the U.S. standard. In responding to this comment, CXA reiterated that the vehicle's compliance with Standard No. 302 is established through the German Certificate of Conformity showing that it meets the requirements of ECE Standard 302, which are identical to those of Standard NO. 302.

Bumper Standard: Citroen noted that CXA did not submit any test results to demonstrate that the Citroen XM complies with this standard, as found in 49 CFR Part 581, but instead based its statement of compliance on a visual inspection of the vehicle and on the vehicle's ability to meet purportedly equivalent requirements in ECE Regulation No. 32. Citroen observed that the two standards differ in that the European standard permits testing to be conducted "in normal driving conditions as contemplated by the manufacturer," whereas the U.S. standard has been interpreted by NHTSA as requiring bumpers to be tested at all heights at which a vehicle is capable of being operated. Citroen stated that the XM is equipped with a hydropneumatic suspension system that permits its ground clearance to be adjusted by the driver to four heights with a maximum variation of 7.5 to 8 inches. Citroen contended that the vehicle is not capable of compliance with the Bumper Standard at its lowest adjustable position, as it would sustain damage to the front headlamps if tested at this level. CXA responded that the technical specifications contained in the Citroen XM manual identify the vehicle's total

suspension displacement as 163mm (6.4 inches), as opposed to the 7.5 to 8 inch figure given by Citroen. CXA further stated that based on measurements that it took from a number of XM vehicles, the bumper center height is at an average of 16 inches from the ground at the lowest suspension setting and a maximum average height of 20 inches from the ground at the highest suspension setting. CXA contended that these measurements place the center of the bumper face within the impact specifications of the test procedure at 49 CFR 581.7.

Sedan vs. Station Wagon: Citroen noted that in its letter of July 15, 1992, CXA informed NHTSA that the station wagon version of the Citroen XM was intended to be included in its petition, but provided no additional test data and/or engineering analysis to demonstrate that the station wagon is capable of being conformed to U.S. safety standards. Citroen stated that it had made a number of modifications to the subframe of the station wagon that would compel it, as a manufacturer, to conduct testing to verify compliance with Standard Nos. 108, 204, 208, 210, 212, 216, and 301, as well as with the bumper standard at 49 CFR part 581. CXA responded that because the station wagon version of the Citroen XM is slightly heavier and longer than the sedan version of the vehicle, and has been reinforced at many locations, "it should perform better than the sedan in all areas of crashworthiness." CXA further stated that all other components of the station wagon are identical to those found on the sedan.

Running Changes: Citroen expressed concern that CXA would be unaware of running changes that it makes on XM production vehicles that could affect their compliance with U.S. safety standards. As an example, Citroen stated that it has fitted new front pads and calipers on 1992 XM vehicles that are not interchangeable with older components, and it has changed the material used in its non-asbestos brake pad lining. CXA responded that running changes are normally made to improve the safety or performance of a vehicle, and never to diminish it, and that it can only obtain vehicles several months after they have been produced, at which time any running changes that were made are a matter of public knowledge.

NHTSA has reviewed each of the issues that Citroen has raised regarding CXA's petition. With respect to Standard No. 105, NHTSA is of the opinion that the specifications for the Citroen XM brake system are essentially equivalent to those of the CX model for which CXA supplied test data. NHTSA is willing to accept that data as demonstrating that the brake system on the XM is capable of complying with the standard. NHTSA is also satisfied that the lighting equipment on the Citroen XM is designed to comply with Standard No. 108 by virtue of the fact that the DOT certification symbol appears on that equipment.

With respect to Standard No. 203, CXA has shown to NHTSA's satisfaction that the steering control equipment tested on the Citroen CX is sufficiently similar to what is found on the Citroen XM to demonstrate the test vehicle's conformity to the standard. CXA also furnished satisfactory evidence that the test procedures utilized were those prescribed by the standard.

With respect to Standard No. 208, NHTSA agrees with CXA's position that there is no need for it to show compliance with the occupant crash protection requirements of paragraph S5.1 with both manual and automatic belts if compliance can be shown with automatic belts alone. NHTSA has also concluded that here is no need for CXA to conduct an angular frontal barrier crash test in addition to he perpendicular test that it has already run for the Citroen XM. The agency has reviewed certification data from many vehicle manufacturers that consistently show lower injury levels resulting when the test is conducted at a 30 degree angle. After reviewing the full frontal test results that CXA furnished on the Citroen XM, and considering the components that were contacted by the dummies in these tests, it is NHTSA's engineering judgment that the lower vehicle acceleration pulse that occurs in angular impact would not produce failing results in the Citroen XM if an angular test had been run. Additionally, NHTSA notes that if the manual pelvic restraint installed in the Citroen XM were used, the likelihood of more severe contacts with vehicle surfaces would be reduced.

With respect to Standard No. 210, the data from the in-house testing conducted by CXA demonstrates that the Citroen XM that was tested complies with the standard. With respect to Standard No. 302, NHTSA notes that in its petition, CXA described the Citroen XM as being upholstered in leather or flame retardant fabric which meets the requirements of the standard. CXA subsequently furnished information to verify the vehicle's compliance with Standard No. 302.

As far as the Bumper Standard in 49 CFR part 581 is concerned, NHTSA accepts, with one exception, the measurements furnished by CXA that show the center of the bumper face within the impact specifications of the standard's test procedure. The one exception is that when the vehicle is at its lowest suspension setting, the impact surface of the pendulum that is used as a test device for this standard would be above the top of the bumper. However, the recess of the headlamps (their longitudinal distance from the forward edge of the bumper) appears sufficient to prevent them from being contacted by the impact surface of the pendulum. As a consequence, NHTSA is satisfied that the Citroen XM meets the protective criteria for lamps that are specified in § 581.5(c)(1) of the standard.

Additionally, NHTSA is of the opinion that the station wagon version of the Citroen XM is sufficiently similar to the sedan version of that vehicle, with respect to all standards at issue, to be included within the same import eligibility determination without the need for additional testing or evidence of compliance. NHTSA does not believe that the prospect of running changes on XM production vehicles that could affect compliance with U.S. safety standards impedes the granting of CXA's petition. The basis for the petition is that the safety features of the vehicle comply with or are capable of being modified to comply with all applicable safety standards. It is unlikely that any running changes could so affect the vehicle's compliance with any of the standards at issue to render it incapable of being modified to comply.

In its petition, CXA noted that when tested to Standard No. 216, the Citroen XM sustained a minimum roof crush resistance of 4572 pounds at 5.0 inches, 272 pounds below the required minimum for a vehicle with an unloaded weight of 3230 pounds. CXA attributed this test failure to the fact that the vehicle tested had sustained significant damage in previous testing for compliance with Standard No. 204. NHTSA subsequently requested CXA to conduct additional testing to verify such compliance. Data verifying that the vehicle tested complies with Standard No. 216 was submitted to NHTSA following the close of the comment period. NHTSA did not submit this test data to Citroen for comment because that company did not question the ability of the XM to comply with Standard No. 216 in its comments on the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must

indicate on the Form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VCP #1 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that 1990–1992 Citroen XM passenger cars are eligible for importation into the United States because they have safety features that comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards.

This determination does not constitute a determination by the agency that any Citroen XM passenger car that may be imported under this notice in fact complies with any applicable Federal motor vehicle safety standard, and the importer of any such vehicle must, in accordance with 49 CFR 592.6, satisfy the Administrator that the vehicle has been brought into conformity with those standards.

Authority: 15 U.S.C. 1397(c)(3)(a)(i)(II) and (C)(II); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on September 4, 1992.

William A. Boehly,

Associated Administrator for Enforcement.

[FR Doc. 92–21789 Filed 9–9–92; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Customs Service

Application for Recordation of Trade Name: Coast Foundry & Mfg. Co.

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Coast Foundry & Mfg," used by Coast Foundry & Mfg Co., a corporation organized under the laws of the State of California, located at 2707 North Garey Avenue, Pomona, California 91769.

The application states that the trade name is used in connection with valves and fittings for toilet tanks.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register.**

DATES: Comments must be received on or before November 9, 1992.

ADDRESSES: Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (room 2104), Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Delois P. Cooper, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., Washington DC 20229 (202–566–6956).

Dated: September 1, 1992.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 92–21690 Filed 9–9–92; 8:45 am]

BILLING CODE 4820–02–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 176
Thursday, September 10, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, September 15, 1992 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor).

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, September 17, 1992 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Title 26 Certification Matters
Proposed Final Repayment Determination and Statement of Reasons—Lyndon H. LaRouche, Jr., and the LaRouche Democratic Campaign
Advisory Opinion 1992-30; Bevan Morris of Natural Law Party of the United States of America
Advisory Opinion 1992-32; John L. Sharman of Mike Andrews for Congress
Notice of Proposed Rulemaking—Best efforts to obtain and report contributor identification

DATE AND TIME: Wednesday, September 30, 1992 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This oral presentation Will Be Open to the Public.

MATTER BEFORE THE COMMISSION: Jackson for President 1988 Committee.

DATE AND TIME: Wednesday, October 21, 1992 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This Oral Presentation Will Be Open to the Public.

MATTER BEFORE THE COMMISSION: Americans for Robertson Committee.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219-4155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 92-22001 Filed 9-8-92; 2:43 pm]

BILLING CODE 6715-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:30 a.m., Monday, September 14, 1992, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 4, 1992.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 92-21873 Filed 9-4-92; 4:56 pm]

BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 9:00 a.m., Monday, September 14, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposals to implement section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 on prompt corrective action for troubled depository institutions. (Proposed earlier for public comment; Docket No. R-0763.)
2. Determination with respect to France under the Primary Dealers Act of 1988.
3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: September 4, 1992.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 92-21872 Filed 9-4-92; 4:56 am]

BILLING CODE 6210-01-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 1:00 p.m., Thursday, September 17, 1992.

PLACE: Hearing Room, Suite 850, 1425 K. Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

(1) Representation determinations issued pursuant to the Delegation Order to the Executive Director.
(2) New Governmentwide Standards of Ethical Conduct.
(3) Representation Assistant Position.
(4) Availability of Automated Arbitral information.
(5) Case closings through FY-1992 to date.
(6) Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Mr. William A. Gill, Jr., Executive Director, Tel: (202) 523-5920.

Date of Notice: September 8, 1992.

William A. Gill, Jr.,
Executive Director, National Mediation Board.

[FR Doc. 92-21978 Filed 9-8-92; 2:42 pm]

BILLING CODE 7550-01-M

Corrections

Federal Register
Vol. 57, No. 176
Thursday, September 10, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 86-101-2]

Importation of Birds

Correction

In proposed rule document 92-19912 appearing on page 37737 in the issue of Thursday, August 20, 1992, in the second column, under **SUPPLEMENTARY INFORMATION:**, in the first paragraph, in the fifth line from the bottom, after "United States" insert ", and the offspring of those birds, to be imported into the United States".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP92-657-000, et al.]

Southwest Gas Corporation, et al.; Natural Gas Certificate Filings

Correction

In notice document 92-21001 beginning on page 39678 in the issue of Tuesday, September 1, 1992 make the following corrections:

On page 39679, in the first column, in the table, the Docket numbers now reading "CI92-770-000, CI92-771-000, CI92-772-000, CI92-773-000, CI92-774-000, and CI92-775-000" should read "CI92-70-000, CI92-71-000, CI92-72-000, CI92-73-000, CI92-74-000 and CI92-75-000" respectively.

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—"Ultra Low Emission Engine Program"

Correction

In notice document 92-17464 appearing on page 33013 in the issue of Friday, July 24, 1992, in the first column, the heading should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 49

[PS-17-91]

RIN 1545-AP67

Facilities and Services Excise Tax on Communications

Correction

In proposed rule document 92-18060 appearing on page 33918 in the issue of Friday, July 31, 1992, make the following corrections:

On page 33918, in the 2d column, in the last paragraph, 11 lines from the bottom "not" should read "now".

2. On the same page, in the third column, in paragraph (1), in the fifth line "service" should read "services".

BILLING CODE 1505-01-D

federal register

Thursday
September 10, 1992

Part II

Department of Justice

Antitrust Division

Federal Trade Commission

1992 Horizontal Merger Guidelines; Notice

DEPARTMENT OF JUSTICE

Antitrust Division

FEDERAL TRADE COMMISSION

1992 Horizontal Merger Guidelines

AGENCIES: Department of Justice Antitrust Division, and Federal Trade Commission.

ACTION: Notice.

SUMMARY: This notice announces the joint release by the Department and the Commission of the 1992 Horizontal Merger Guidelines, updating Guidelines issued by the Department on June 14, 1984 (published in the Federal Register June 29, 1984 (49 FR 26823)) and the Commission's 1982 Statement Concerning Horizontal Mergers (reprinted in 4 Trade Reg. Rep. (CCH) ¶13,200). The Guidelines have been revised to clarify the Agencies' enforcement policy concerning horizontal mergers and acquisitions subject to section 7 of the Clayton Act, section 1 of the Sherman Act, or section 5 of the Federal Trade Commission Act. The Guidelines describe the analytical process that the Department and the Commission will use in determining whether to challenge a horizontal merger or acquisition. Publication of the Guidelines is intended to assist businesses in complying with the applicable antitrust laws.

DATE: Issued April 2, 1992.

ADDRESSES: Department of Justice, 10th & Constitution Avenue, NW., Washington, DC 20530; Federal Trade Commission, Sixth & Pennsylvania Avenue, NW., Washington, DC 20580.

Dated: September 1, 1992.

Charles A. James,

Acting Assistant Attorney General, Department of Justice.

Janet D. Steiger,

Federal Trade Commission.

U.S. Department of Justice and Federal Trade Commission Statement Accompanying Release of Revised Merger Guidelines

April 2, 1992

The U.S. Department of Justice ("Department") and Federal Trade Commission ("Commission") today jointly issued Horizontal Merger Guidelines revising the Department's 1984 Merger Guidelines and the Commission's 1982 Statement Concerning Horizontal Merger Guidelines. The release marks the first time that the two Federal agencies that share antitrust enforcement jurisdiction have issued joint guidelines.

Central to the 1992 Department of Justice and Federal Trade Commission Horizontal Merger Guidelines is a recognition that sound merger enforcement is an essential component of our free enterprise system benefitting the competitiveness of American firms and the welfare of American consumers. Sound merger enforcement must prevent anticompetitive mergers yet avoid deterring the larger universe of procompetitive or competitively neutral mergers. The 1992 Horizontal Merger Guidelines implement this objective by describing the analytical foundations of merger enforcement and providing guidance enabling the business community to avoid antitrust problems when planning mergers.

The Department first released Merger Guidelines in 1968 in order to inform the business community of the analysis applied by the Department to mergers under the Federal antitrust laws. The 1968 Merger Guidelines eventually fell into disuse, both internally and externally, as they were eclipsed by developments in legal and economic thinking about mergers.

In 1982, the Department released revised Merger Guidelines which, reflecting those developments, departed dramatically from the 1968 version. Relative to the Department's actual practice, however, the 1982 Merger Guidelines represented an evolutionary not revolutionary change. On the same date, the Commission released its Statement Concerning Horizontal Mergers highlighting the principal considerations guiding the Commission's horizontal merger enforcement and noting the "considerable weight" given by the Commission to the Department's 1982 Merger Guidelines.

The Department's current Merger Guidelines, released in 1984, refined and clarified the analytical framework of the 1982 Merger Guidelines. Although the agencies' experience with the 1982 Merger Guidelines reaffirmed the soundness of its underlying principles, the Department concluded that there remained room for improvement.

The revisions embodied in the 1992 Horizontal Merger Guidelines reflect the next logical step in the development of the agencies' analysis of mergers. They reflect the Department's experience in applying the 1982 and 1984 Merger Guidelines as well as the Commission's experience in applying those Guidelines and the Commission's 1982 Statement. Both the Department and the Commission believed that their respective Guidelines and Statement presented sound frameworks for antitrust analysis of mergers, but that improvements could be made to reflect advances in legal and economic thinking. The 1992 Horizontal Merger Guidelines accomplish this objective and also clarify certain aspects of the Merger Guidelines that proved to be ambiguous or were interpreted by observers in ways that were inconsistent with the actual policy of the agencies.

The 1992 Horizontal Merger Guidelines do not include a discussion of horizontal effects from non-horizontal mergers (*e.g.*, elimination of specific potential entrants and competitive problems from vertical mergers). Neither agency has changed its policy with respect to non-horizontal mergers. Specific guidance on non-horizontal mergers is provided in section 4 of the Department's 1984 Merger Guidelines, read in the context of today's revisions to the treatment of horizontal mergers.

A number of today's revisions are largely technical or stylistic. One major objective of the revisions is to strengthen the document as an analytical road map for the evaluation of mergers. The language, therefore, is intended to be burden-neutral, without altering the burdens of proof or burdens of coming forward as those standards have been established by the courts. In addition, the revisions principally address two areas.

The most significant revision to the Merger Guidelines is to explain more clearly how mergers may lead to adverse competitive effects and how particular market factors relate to the analysis of those effects. These revisions are found in section 2 of the Horizontal Merger Guidelines. The second principal revision is to sharpen the distinction between the treatment of various types of supply responses and to articulate the framework for analyzing the timeliness, likelihood and sufficiency of entry. These revisions are found in sections 1.3 and 3.

The new Horizontal Merger Guidelines observe, as did the 1984 Guidelines, that because the specific standards they set out must be applied in widely varied factual circumstances, mechanical application of those standards could produce misleading results. Thus, the Guidelines state that the agencies will apply those standards reasonably and flexibly to the particular facts and circumstances of each proposed merger.

Department of Justice and Federal Trade Commission Horizontal Merger Guidelines

April 2, 1992.

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0. Purpose, Underlying Policy Assumptions and Overview

These Guidelines outline the present enforcement policy of the Department of Justice and the Federal Trade Commission (the "Agency") concerning horizontal acquisition and mergers ("mergers") subject to section 7 of the Clayton Act,[1] to section 1 of the Sherman Act [2], or to section 5 of the FTC Act.[3] They describe the analytical framework and specific standards normally used by the Agency in analyzing mergers.[4] By stating its policy as simply and clearly as possible, the Agency hopes to reduce the uncertainty associated with enforcement of the antitrust laws in this area.

Although the Guidelines should improve the predictability of the Agency's merger enforcement policy, it is not possible to remove the exercise of judgment from the evaluation of mergers under the antitrust laws. Because the specific standards set forth in the Guidelines must be applied to a broad range of possible factual circumstances, mechanical application of those standards may provide misleading answers to the economic questions raised under the antitrust laws. Moreover, information is often incomplete and the picture of competitive conditions that develops from historical evidence may provide an incomplete answer to the forward-looking inquiry of the Guidelines. Therefore, the Agency will apply the standards of the Guidelines reasonably and flexibily to the particular facts and circumstances of each proposed merger.

0.1 Purpose and Underlying Policy Assumptions of the Guidelines

The Guidelines are designed primarily to articulate the analytical framework the Agency applies in determining whether a merger is likely substantially to lessen competition, not to describe how the Agency will conduct the litigation of cases that it decides to bring. Although relevant in the latter context, the factors contemplated in the Guidelines neither dictate nor exhaust the range of evidence that the Agency must or may introduce in litigation. Consistent with their objective, the Guidelines do not attempt to assign the burden of proof, or the burden of coming forward with evidence, on any particular issue. Nor do the Guidelines attempt to adjust or reapportion burdens of proof or burdens of coming forward as those standards have been established by the courts.[5] Instead, the Guidelines set forth a methodology for analyzing issues once the necessary facts are available. The necessary facts may be derived from the documents and statements of both the merging firms and other sources.

Throughout the Guidelines, the analysis is focused on whether consumers or producers "likely would" take certain actions, that is, whether the action is in the actor's economic interest. References to the profitability of certain actions focus on economic profits rather than accounting profits. Economic profits may be defined as the excess of revenues over costs where costs include the opportunity cost of invested capital.

Mergers are motivated by the prospect of financial gains. The possible sources of the financial gains from mergers are many, and the Guidelines do not attempt to identify all possible sources of gain in every merger. Instead, the Guidelines focus on the one potential source of gain that is of concern under the antitrust laws: market power.

The unifying theme of the Guidelines is that mergers should not be permitted to create or enhance market power or to facilitate its exercise. Market power to a seller is the ability profitably to maintain prices above competitive levels for a significant period of time.[6] In some circumstances, a sole seller (a "monopolist") of a product with no good substitutes can maintain a selling price that is above the level that would prevail if the market were competitive. Similarly, in some circumstances, where only a few firms account for most of the sales of a product, those firms can exercise market power, perhaps even approximating the performance of a monopolist, by either explicitly or implicitly coordinating their actions. Circumstances also may permit a single firm, not a monopolist, to excercise market power through unilateral or non-coordinated conduct—conduct the success of which does not rely on the concurrence of other firms in the market or on coordinated responses by those firms. In any case, the result of the exercise of market power is a transfer of wealth from buyers to sellers or a misallocation of resources.

Market power also encompasses the ability of a single buyer (a "monopsonist"), a coordinating group of buyers, or a single buyer, not a monopsonist, to depress the price paid for a product to a level that is below the competitive price and thereby depress output. The exercise of market power by buyers ("monopsony power") has adverse effects comparable to those associated with the exercise of market power by sellers. In order to assess potential monopsony concerns, the Agency will apply an analytical framework analogous to the framework of these Guidelines.

While challenging competitively harmful mergers, the Agency seeks to avoid unnecessary interference with the larger universe of mergers that are either competitively beneficial or neutral. In

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[1] 15 U.S.C. 18 (1988). Mergers subject to section 7 are prohibited if their effect "may be substantially to lessen competition, or to tend to create a monopoly."

[2] 15 U.S.C. 1 (1988). Mergers subject to section 1 are prohibited if they constitute a "contract, combination * * *, or conspiracy in restraint of trade."

[3] 15 U.S.C. 45 (1988). Mergers subject to section 5 are prohibited if they constitute an "unfair method of competition."

[4] These Guidelines update the Merger Guidelines issued by the U.S. Department of Justice in 1984 and the Statement of Federal Trade Commission Concerning Horizontal Mergers issued in 1982. The Merger Guidelines may be revised from time to time as necessary to reflect any significant changes in enforcement policy or to clarify aspects of existing policy

[5] For example, the burden with respect to efficiency and failure continues to reside with the proponents of the merger.

[6] Sellers with market power also may lessen competition on dimensions other than price, such as product quality, service, or innovation.

implementing this objective, however, the Guidelines reflect the congressional intent that merger enforcement should interdict competitive problems in their incipiency.

0.2 Overview

The Guidelines describe the analytical process that the Agency will employ in determining whether to challenge a horizontal merger. First, the Agency assesses whether the merger would significantly increase concentration and result in a concentrated market, properly defined and measured. Second, the Agency assesses whether the merger, in light of market concentration and other factors that characterize the market, raises concern about potential adverse competitive effects. Third, the Agency assesses whether entry would be timely, likely and sufficient either to deter or to counteract the competitive effects of concern. Fourth, the Agency assesses any efficiency gains that reasonably cannot be achieved by the parties through other means. Finally the Agency assesses whether, but for the merger, either party to the transaction would be likely to fail, causing its assets to exit the market. The process of assessing market concentration, potential adverse competitive effects, entry, efficiency and failure is a tool that allows the Agency to answer the ultimate inquiry in merger analysis: whether the merger is likely to create or enhance market power or to facilitate its exercise.

1. Market Definition, Measurement and Concentration

1.0 Overview

A merger is unlikely to create or enhance market power or to facilitate its exercise unless it significantly increases concentration and results in a concentrated market, properly defined and measured. Mergers that either do not significantly increase concentration or do not result in a concentrated market ordinarily require no further analysis.

The analytic process described in this section ensures that the Agency evaluates the likley competitive impact of a merger within the context of economically meaningful markets—*i.e.*, markets that could be subject to the exercise of market power. Accordingly, for each product or service (hereafter "product") of each merger firm, the Agency seeks to define a market in which firms could effectively exercise market power if they were able to coordinate their actions.

Market definition focuses solely on demand substitution factors—*i.e.*, possible consumer responses. Supply substitution factors—*i.e.*, possible production responses—are considered elsewhere in the Guidelines in the identification of firms that participate in the relevant market and the analysis of entry. See sections 1.3 and 3. A market is defined as a product or group of products and a geographic area in which it is produced or sold such that a hypothetical profit-maximizing firm, not subject to price regulation, that was the only present and future producer or seller of those products in that area likely would impose at least a "small but significant and nontransitory" increase in price, assuming the terms of sale of all other products are held constant. A relevant market is a group of products and a geographic area that is no bigger than necessary to satisfy this test. The "small but significnat and nontransitory" increase in price is employed solely as a methodological tool for the analysis of mergers: it is not a tolerance level for price increases.

Absent price discrimination, a relevant market is described by a product or group of products and a geographic area. In determining whether a hypothetical monopolist would be in a position to exercise market power, it is necessary to evaluate the likely demand responses of consumers to a price increase. A price increase could be made unprofitable by consumers either switching to other products or switching to the same product produced by firms at other locations. The nature and magnitude of these two types of demand responses respectively determine the scope of the product market and the geographic market.

In contrast, where a hypothetical monopolist likely would discriminate in prices charged to different groups of buyers, distinguished, for example, by their uses or locations, the Agency may delineate different relevant markets corresponding to each such buyer group. Competition for sales to each such group may be affected differently by a particular merger and markets are delineated by evaluating the demand response of each such buyer group. A relevant market of this kind is described by a collection of products for sale to a given group of buyers.

Once defined, a relevant market must be measured in terms of its participants and concentration. Participants include firms currently producing or selling the market's products in the market's geographic area. In addition, participants may include other firms depending on their likely supply responses to a "small but significant and nontransitory" price increase. A firm is viewed as a participant if, in response to a "small but significant and nontransitory" price increase, it likely would enter rapidly into production or sale of a market product in the market's area, without incurring significant sunk costs of entry and exit. Firms likely to make any of these supply responses are considered to be "uncommitted" entrants because their supply response would create new production or sale in the relevant market and because that production or sale could be quickly terminated without significant loss.[7] Uncommitted entrants are capable of making such quick and uncommitted supply responses that they likely influenced the market premerger, would influence it post-merger, and accordingly are considered as market participants at both times. This analysis of market definition and market measurement applies equally to foreign and domestic firms.

If the process of market definition and market measurement identifies one or more relevant markets in which the merging firms are both participants, then the merger is considered to be horizontal. Sections 1.1 through 1.5 describe in greater detail how product and geographic markets will be defined, how market shares will be calculated and how market concentration will be assessed.

1.1 Product Market Definition

The Agency will first define the relevant product market with respect to each of the products of each of the merging firms.[8]

1.11 General Standards

Absent price discrimination, the Agency will delineate the product market to be a product or group of products such that a hypothetical profit-maximizing firm that was the only present and future seller of those products ("monopolist") likely would impose at least a "small but significant and nontransitory" increase in price. That is, assuming that buyers likely

[7] Probable supply responses that require the entrant to incur significant sunk costs of entry and exit are not part of market measurement, but are included in the analysis of the significance of entry. See Section 3. Entrants that must commit substantial sunk costs are regarded as "committed" entrants because those sunk costs make entry irreversible in the short term without foregoing that investment; thus the likelihood of their entry must be evaluated with regard to their long-term profitability.

[8] Although discussed separately, product market definition and geographic market definition are interrelated. In particular, the extent to which buyers of a particular product would shift to other products in the event of a "small but significant and nontransitory" increase in price must be evaluated in the context of the relevant geographic market.

would respond to an increase in price for a tentatively identified product group only by shifting to other products, what would happen? If the alternatives were, in the aggregate, sufficiently attractive at their existing terms of sale, an attempt to raise prices would result in a reduction of sales large enough that the price increase would not prove profitable, and the tentatively identified product group would prove to be too narrow.

Specifically, the Agency will begin with each product (narrowly defined) produced or sold by each merging firm and ask what would happen if a hypothetical monopolist of that product imposed at least a "small but significant and nontransitory" increase in price, but the terms of sale of all other products remained constant. If, in response to the price increase, the reduction in sales of the product would be large enough that a hypothetical monopolist would not find it profitable to impose such an increase in price, then the Agency will add to the product group the product that is the next-best substitute for the merging firm's product.[9]

In considering the likely reaction of buyers to a price increase, the Agency will take into account all relevant evidence, including, but not limited to, the following:

(1) Evidence that buyers have shifted or have considered shifting purchases between products in response to relative changes in price or other competitive variables;

(2) Evidence that sellers base business decisions on the prospect of buyer substitution between products in response to relative changes in price or other competitive variables;

(3) The influence of downstream competition faced by buyers in their output markets; and

(4) The timing and costs of switching products.

The price increase question is then asked for a hypothetical monopolist controlling the expanded product group. In performing successive iterations of the price increase test, the hypothetical monopolist will be assumed to pursue maximum profits in deciding whether to raise the prices of any or all of the additional products under its control. This process will continue until a group of products is identified such that a hypothetical monopolist over that group of products would profitably impose at least a "small but significant and nontransitory" increase, including the price of a product of one of the merging firms. The Agency generally will consider the relevant product market to be the smallest group of products that satisfies this test.

In the above analysis, the Agency will use prevailing prices of the products of the merging firms and possible substitutes for such products, unless premerger circumstances are strongly suggestive of coordinated interaction, in which case the Agency will use a price more reflective of the competitive price.[10] However, the Agency may use likely future prices, absent the merger, when changes in the prevailing prices can be predicted with reasonable reliability. Changes in price may be predicted on the basis of, for example, changes in regulation which affect price either directly or indirectly by affecting costs or demand.

In general, the price for which an increase will be postulated will be whatever is considered to be the price of the product at the stage of the industry being examined.[11] In attempting to determine objectively the effect of a "small but significant and nontransitory" increase in price, the Agency, in most contexts, will use a price increase of five percent lasting for the foreseeable future. However, what constitutes a "small but significant and nontransitory" increase in price will depend on the nature of the industry, and the Agency at times may use a price increase that is larger or smaller than five percent.

1.12 Product Market Definition in the Presence of Price Discrimination

The analysis of product market definition to this point has assumed that price discrimination—charging different buyers different prices for the same product, for example—would not be profitable for a hypothetical monopolist. A different analysis applies where price discrimination would be profitable for a hypothetical monopolist.

Existing buyers sometimes will differ significantly in their likelihood of switching to other products in response to a "small but significant and nontransitory" price increase. If a hypothetical monopolist can identify and price differently to those buyers ("targeted buyers") who would not defeat the targeted price increase by substituting to other products in response to a "small but significant and nontransitory" price increase for the relevant product, and if other buyers likely would not purchase the relevant product and resell to targeted buyers, then a hypothetical monopolist would profitably impose a discriminatory price increase on sales to targeted buyers. This is true regardless of whether a general increase in price would cause such significant substitution that the price increase would not be profitable. The Agency will consider additional relevant product markets consisting of a particular use or uses by groups of buyers of the product for which a hypothetical monopolist would profitably and separately impose at least a "small but significant and nontransitory" increase in price.

1.2 Geographic Market Definition

For each product market in which both merging firms participate, the Agency will determine the geographic market or markets in which the firms produce or sell. A single firm may operate in a number of different geographic markets.

1.21 General Standards

Absent price discrimination, the Agency will delineate the geographic market to be a region such that a hypothetical monopolist that was the only present or future producer of the relevant product at locations in that region would profitably impose at least a "small but significant and nontransitory" increase in price, holding constant the terms of sale for all products produced elsewhere. That is, assuming that buyers likely would respond to a price increase on products produced within the tentatively identified region only by shifting to products produced at locations of production outside the region, what would happen? If those locations of production outside the region were, in the aggregate, sufficiently attractive at their existing terms of sale, an attempt to raise price would result in a reduction in sales large enough that the price increase would not prove profitable, and the tentatively identified geographic area would prove to be too narrow.

In defining the geographic market or markets affected by a merger, the Agency will begin with the location of each merging firm (or each plant of a multiplant firm) and ask what would happen if a hypothetical monopolist of

[9] Throughout the Guidelines, the term "next best substitute" refers to the alternative which, if available in unlimited quantities at constant prices, would account for the greatest value of diversion of demand in response to a "small but significant and nontransitory" price increase.

[10] The terms of sale of all other products are held constant in order to focus market definition on the behavior of consumers. Movements in the terms of sale for other products, as may result from the behavior of producers of those products, are accounted for in the analysis of competitive effects and entry. See Sections 2 and 3.

[11] For example, in a merger between retailers, the relevant price would be the retail price of a product to consumers. In the case of a merger among oil pipelines, the relevant price would be the tariff—the price of the transportation service.

the relevant product at that point imposed at least a "small but significant and nontransitory" increase in price, but the terms of sale at all other locations remained constant. If, in response to the price increase, the reduction in sales of the product at that location would be large enough that a hypothetical monopolist producing or selling the relevant product at the merging firm's location would not find it profitable to impose such an increase in price, then the Agency will add the location from which production is the next-best substitute for production at the merging firm's location.

In considering the likely reaction of buyers to a price increase, the Agency will take into account all relevant evidence, including, but not limited to, the following:

(1) Evidence that buyers have shifted or have considered shifting to relative changes in price or other competitive variables;

(2) Evidence that sellers base business decisions on the prospect of buyer substitution between geographic locations in response to relative changes in price or other competitive variables;

(3) The influence of downstream competition faced by buyers in their output markets; and

(4) The timing and costs of switching suppliers.

The price increase question is then asked for a hypothetical monopolist controlling the expanded group of locations. In performing successive iterations of the price increase test, the hypothetical monopolist will be assumed to pursue maximum profits in deciding whether to raise the price at any or all of the additional locations under its control. This process will continue until a group of locations is identified such that a hypothetical monopolist over that group of locations would profitably impose at least a "small but significant and nontransitory" increase, including the price charged at a location of one of the merging firms.

The "smallest market" principle will be applied as it is in product market definition. The price for which an increase will be postulated, what constitutes a "small but significant and nontransitory" increase in price, and the substitution decisions of consumers all will be determined in the same way in which they are determined in product market definition.

1.22 Geographic Market Definition in the Presence of Price Discrimination

The analysis of geographic market definition to this point has assumed that geographic price discrimination—charging different prices net of transportation costs for the same product to buyers in different areas, for example—would not be profitable for a hypothetical monopolist. However, if a hypothetical monopolist can identify and price differently to buyers in certain areas ("targeted buyers") who would not defeat the targeted price increase by substituting to more distant sellers in response to a "small but significant and nontransitory" price increase for the relevant product, and if other buyers likely would not purchase the relevant product and resell to targeted buyers,[12] then a hypothetical monopolist would profitably impose a discriminatory price increase. This is true even where a general price increase would cause such significant substitution that the price increase would not be profitable. The Agency will consider additional geographic markets consisting of particular locations of buyers for which a hypothetical monopolist would profitably and separately impose at least a "small but significant and nontransitory" increase in price.

1.3 Identification of Firms that Participate in the Relevant Market

1.31 Current Producers or Sellers

The Agency's identification of firms that participate in the relevant market begins with all firms that currently produce or sell in the relevant market. This includes vertically integrated firms to the extent that such inclusion accurately reflects their competitive significance in the relevant market prior to the merger. To the extent that the analysis under Section 1.1 indicates that used, reconditioned or recycled goods are included in the relevant market, market participants will include firms that produce or sell such goods and that likely would offer those goods in competition with other relevant products.

1.32 Firms That Participate Through Supply Response

In addition, the Agency will identify other firms not currently producing or selling the relevant product in the relevant area as participating in the relevant market if their inclusion would more accurately reflect probable supply responses. These firms are termed "uncommitted entrants." These supply responses must be likely to occur within one year and without the expenditure of significant sunk costs of entry and exit, in response to a "small but significant and nontransitory" price increase. If a firm has the technological capability to achieve such an uncommitted supply response, but likely would not (*e.g.*, because difficulties in achieving product acceptance, distribution, or production would render such a response unprofitable), that firm will not be considered to be a market participant. The competitive significance of supply responses that require more time or that require firms to incur significant sunk costs of entry and exit will be considered in entry analysis. See section 3.[13]

Sunk costs are the acquisition costs of tangible and intangible assets that cannot be recovered through the redeployment of these assets outside the relevant market, *i.e.*, costs uniquely incurred to supply the relevant product and geographic market. Examples of sunk costs may include market-specific investments in production facilities, technologies, marketing (including product acceptance), research and development, regulatory approvals, and testing. A significant sunk cost is one which would not be recouped within one year of the commencement of the supply response, assuming a "small but significant and nontransitory" price increase in the relevant market. In this context, a "small but significant and nontransitory" price increase will be determined in the same way in which it is determined in product market definition, except the price increase will be assumed to last one year. In some instances, it may be difficult to calculate sunk costs with precision. Accordingly, when necessary, the Agency will make an overall assessment of the extent of sunk costs for firms likely to participate through supply responses.

These supply responses may give rise to new production of products in the relevant product market or new sources of supply in the relevant geographic market. Alternatively, where price discrimination is likely so that the relevant market is defined in terms of a targeted group of buyers, these supply responses serve to identify new sellers to the targeted buyers. Uncommitted supply responses may occur in several different ways: by the switching or extension of existing assets to production or sale in the relevant market; or by the construction or

[12] This arbitrage is inherently impossible for many services and is particularly difficult where the product is sold on a delivered basis and where transportation costs are a significant percentage of the final cost.

[13] If uncommitted entrants likely would also remain in the market and would meet the entry tests of timeliness, likelihood and sufficiency, and thus would likely deter anticompetitive mergers or deter or counteract the competitive effects of concern (See section 3, *infra*), the Agency will consider the impact of those firms in the entry analysis.

acquisition of assets that enable production or sale in the relevant market.

1.321 Production Substitution and Extension: The Switching or Extension of Existing Assets to Production or Sale in the Relevant Market

The productive and distributive assets of a firm sometimes can be used to produce and sell either the relevant products or products that buyers do not regard as good substitutes. Production substitution refers to the shift by a firm in the use of assets from producing and selling one product to producing and selling another. Production extension refers to the use of those assets, for example, existing brand names and reputation, both for their current production and for production of the relevant product. Depending upon the speed of that shift and the extent of sunk costs incurred in the shift or extension, the potential for production substitution or extension may necessitate treating as market participants firms that do not currently produce the relevant product.[14]

If a firm has existing assets that likely would be shifted or extended into production and sale of the relevant product within one year, and without incurring significant sunk costs of entry and exit, in response to a "small but significant and nontransitory" increase in price for only the relevant product, the Agency will treat that firm as a market participant. In assessing whether a firm is such a market participant, the Agency will take into account the costs of substitution or extension relative to the profitability of sales at the elevated price, and whether the firm's capacity is elsewhere committed or elsewhere so profitably employed that such capacity likely would not be available to respond to an increase in price in the market.

1.322 Obtaining New Assets for Production or Sale of the Relevant Product

A firm may also be able to enter into production or sale in the relevant market within one year and without the expenditure of significant sunk costs of entry and exit, in response to a "small but significant and nontransitory" increase in price for only the relevant product, even if the firm is newly organized or is an existing firm without products or productive assets closely related to the relevant market. If new firms, or existing firms without closely related products or productive assets, likely would enter into production or sale in the relevant market within one year without the expenditure of significant sunk costs of entry and exit, the Agency will treat those firms as market participants.

1.4 Calculating Market Shares

1.41 General Approach

The Agency normally will calculate market shares for all firms (or plants) identified as market participants in Section 1.3 based on the total sales or capacity currently devoted to the relevant market together with that which likely would be devoted to the relevant market in response to a "small but significant and nontransitory" price increase. Market shares can be expressed either in dollar terms through measurement of sales, shipments, or production, or in physical terms through measurement of sales, shipments, production, capacity, or reserves.

Market shares will be calculated using the best indicator of firms' future competitive significance. Dollar sales or shipments generally will be used if firms are distinguished primarily by differentiation of their products. Unit sales generally will be used if firms are distinguished primarily on the basis of their relative advantages in serving different buyers or groups of buyers. Physical capacity or reserves generally will be used if it is these measures that most effectively distinguish firms.[15] Typically, annual data are used, but where individual sales are large and infrequent so that annual data may be unrepresentative, the Agency may measure market shares over a longer period of time.

In measuring a firm's market share, the Agency will not include its sales or capacity to the extent that the firm's capacity is committed or so profitably employed outside the relevant market that it would not be available to respond to an increase in price in the market.

1.42 Price Discrimination Markets

When markets are defined on the basis of price discrimination (Sections 1.12 and 1.22), the Agency will include only sales likely to be made into, or capacity likely to be used to supply, the relevant market in response to a "small but significant and nontransitory" price increase.

1.43 Special Factors Affecting Foreign Firms

Market shares will be assigned to foreign competitors in the same way in which they are assigned to domestic competitors. However, if exchange rates fluctuate significantly, so that comparable dollar calculations on an annual basis may be unrepresentative, the Agency may measure market shares over a period longer than one year.

If shipments from a particular country to the United States are subject to a quota, the market shares assigned to firms in that country will not exceed the amount of shipments by such firms allowed under the quota.[16] In the case of restraints that limit imports to some percentage of the total amount of the product sold in the United States (*i.e.*, percentage quotas), a domestic price increase that reduced domestic consumption also would reduce the volume of imports into the United States. Accordingly, actual import sales and capacity data will be reduced for purposes of calculating market shares. Finally, a single market share may be assigned to a country or group of countries if firms in that country or group of countries act in coordination.

1.5 Concentration and Market Shares

Market concentration is a function of the number of firms in a market and their respective market shares. As an aid to the interpretation of market data, the Agency will use the Herfindahl-Hirschman Index ("HHI") of market concentration. The HHI is calculated by summing the squares of the individual market shares of all the participants.[17] Unlike the four-firm concentration ratio, the HHI reflects both the distribution of the market shares of the top four firms and the composition of the market outside the top four firms. It also gives proportionately greater weight to the

[14] Under other analytical approaches, production substitution sometimes has been reflected in the description of the product market. For example, the product market for stamped metal products such as automobile hub caps might be described as "light metal stamping," a production process rather than a product. The Agency believes that the approach described in the text provides a more clearly focused method of incorporating this factor in merger analysis. If production substitution among a group of products is nearly universal among the firms selling one or more of those products, however, the Agency may use an aggregate description of those markets as a matter of convenience.

[15] Where all firms have, on a forward-looking basis, an equal likelihood of securing sales, the Agency will assign firms equal shares.

[16] The constraining effect of the quota on the importer's ability to expand sales is relevant to the evaluation of potential adverse competitive effects. See Section 2.

[17] For example, a market consisting of four firms with market shares of 30 percent, 30 percent, 20 percent and 20 percent has an HHI of 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI ranges from 10,000 (in the case of a pure monopoly) to a number approaching zero (in the case of an atomistic market). Although it is desirable to include all firms in the calculation, lack of information about small firms is not critical because such firms do not affect the HHI significantly.

market shares of the larger firms, in accord with their relative importance in competitive interactions.

The Agency divides the spectrum of market concentration as measured by the HHI into three regions that can be broadly characterized as unconcentrated (HHI below 1000), moderately concentrated (HHI between 1000 and 1800), and highly concentrated (HHI above 1800). Although the resulting regions provide a useful framework for merger analysis, the numerical divisions suggest greater precision than is possible with the available economic tools and information. Other things being equal, cases falling just above and just below a threshold present comparable competitive issues.

1.51 General Standards

In evaluating horizontal mergers, the Agency will consider both the post-merger market concentration and the increase in concentration resulting from the merger.[18] Market concentration is a useful indicator of the likely potential competitive effect of a merger. The general standards for horizontal mergers are as follows:

(a) *Post-Merger HHI Below 1000.* The Agency regards markets in this region to be unconcentrated. Mergers resulting in unconcentrated markets are unlikely to have adverse competitive effects and ordinarily require no further analysis.

(b) *Post-Merger HHI Between 1000 and 1800.* The Agency regards markets in this region to be moderately concentrated. Mergers producing an increase in the HHI of less than 100 points in moderately concentrated markets post-merger are unlikely to have adverse competitive consequences and ordinarily require no further analysis. Mergers producing an increase in the HHI of more than 100 points in moderately concentrated markets post-merger potentially raise significant competitive concerns depending on the factors set forth in sections 2–5 of the Guidelines.

(c) *Post-Merger HHI Above 1800.* The Agency regards markets in this region to be highly concentrated. Mergers producing an increase in the HHI of less than 50 points, even in highly concentrated markets post-merger, are unlikely to have adverse competitive consequences and ordinarily require no further analysis. Mergers producing an increase in the HHI of more than 50 points in highly concentrated markets post-merger potentially raise significant competitive concerns, depending on the factors set forth in sections 2–5 of the Guidelines. Where the post-merger HHI exceeds 1800, it will be presumed that mergers producing an increase in the HHI of more than 100 points are likely to create or enhance market power or facilitate its exercise. The presumption may be overcome by a showing that factors set forth in sections 2–5 of the Guidelines make it unlikely that the merger will create or enhance market power or facilitate its exercise, in light of market concentration and market shares.

1.52 Factors Affecting the Significance of Market Shares and Concentration

The post-merger level of market concentration and the change in concentration resulting from a merger affect the degree to which a merger raises competitive concerns. However, in some situations, market share and market concentration data may either understate or overstate the likely future competitive significance of a firm or firms in the market or the impact of a merger. The following are examples of such situations.

1.521 Changing Market Conditions

Market concentration and market share data of necessity are based on historical evidence. However, recent or ongoing changes in the market may indicate that the current market share of a particular firm either understates or overstates the firm's future competitive significance. For example, if a new technology that is important to long-term competitive viability is available to other firms in the market, but is not available to a particular firm, the Agency may conclude that the historical market share of that firm overstates its future competitive significance. The Agency will consider reasonably predictable effects of recent or ongoing changes in market conditions in interpreting market concentration and market share data.

1.522 Degree of Difference Between the Products and Locations in the Market and Substitutes Outside the Market

All else equal, the magnitude of potential competitive harm from a merger is greater if a hypothetical monopolist would raise price within the relevant market by substantially more than a "small but significant and nontransitory" amount. This may occur when the demand substitutes outside the relevant market, as a group, are not close substitutes for the products and locations within the relevant market. There thus may be a wide gap in the chain of demand substitutes at the edge of the product and geographic market. Under such circumstances, more market power is at stake in the relevant market than in a market in which a hypothetical monopolist would raise price by exactly five percent.

2. The Potential Adverse Competitive Effects of Mergers

2.0 Overview

Other things being equal, market concentration affects the likelihood that one firm, or a small group of firms, could successfully exercise market power. The smaller the percentage of total supply that a firm controls, the more severely it must restrict its own output in order to produce a given price increase, and the less likely it is that an output restriction will be profitable. If collective action is necessary for the exercise of market power, as the number of firms necessary to control a given percentage of total supply decreases, the difficulties and costs of reaching and enforcing an understanding with respect to the control of that supply might be reduced. However, market share and concentration data provide only the starting point for analyzing the competitive impact of a merger. Before determining whether to challenge a merger, the Agency also will assess the other market factors that pertain to competitive effects, as well as entry, efficiencies and failure.

This section considers some of the potential adverse competitive effects of mergers and the factors in addition to market concentration relevant to each. Because an individual merger may threaten to harm competition through more than one of these effects, mergers will be analyzed in terms of as many potential adverse competitive effects as are appropriate. Entry, efficiencies, and failure are treated in Sections 3–5.

2.1 Lessening of Competition Through Coordinated Interaction

A merger may diminish competition by enabling the firms selling in the relevant market more likely, more successfully, or more completely to engage in coordinated interaction that harms consumers. Coordinated interaction is comprised of actions by a group of firms that are profitable for each of them only as a result of the accommodating reactions of the others.

[18] The increase in concentration as measured by the HHI can be calculated independently of the overall market concentration by doubling the product of the market shares of the merging firms. For example, the merger of firms with shares of 5 percent and 10 percent of the market would increase the HHI by 100 ($5 \times 10 \times 2 = 100$). The explanation for this technique is as follows: In calculating the HHI before the merger, the market shares of the merging firms are squared individually: $(a)^2 + (b)^2$. After the merger, the sum of those shares would be squared: $(a + b)^2$, which equals $a^2 + 2ab + b^2$. The increase in the HHI therefore is represented by $2ab$.

This behavior includes tacit or express collusion, and may or may not be lawful in and of itself.

Successful coordinated interaction entails reaching terms of coordination that are profitable to the firms involved and an ability to detect and punish deviations that would undermine the coordinated interaction. Detection and punishment of deviations ensure that coordinating firms will find it more profitable to adhere to the terms of coordination than to pursue short-term profits from deviating, given the costs of reprisal. In this phase of the analysis, the Agency will examine the extent to which post-merger market conditions are conducive to reaching terms of coordination, detecting deviations from those terms, and punishing such deviations. Depending upon the circumstances, the following market factors, among others, may be relevant: The availability of key information concerning market conditions, transactions and individual competitors; the extent of firm and product heterogeneity; pricing or marketing practices typically employed by firms in the market; the characteristics of buyers and sellers; and the characteristics of typical transactions.

Certain market conditions that are conducive to reaching terms of coordination also may be conducive to detecting or punishing deviations from those terms. For example, the extent of information available to firms in the market, or the extent of homogeneity, may be relevant to both the ability to reach terms of coordination and to detect or punish deviations from those terms. The extent to which any specific market condition will be relevant to one or more of the conditions necessary to coordinated interaction will depend on the circumstances of the particular case.

It is likely that market conditions are conducive to coordinated interaction when the firms in the market previously have engaged in express collusion and when the salient characteristics of the market have not changed appreciably since the most recent such incident. Previous express collusion in another geographic market will have the same weight when the salient characteristics of that other market at the time of the collusion are comparable to those in the relevant market.

In analyzing the effect of a particular merger on coordinated interaction, the Agency is mindful of the difficulties of predicting likely future behavior based on the types of incomplete and sometimes contradictory information typically generated in merger investigations. Whether a merger is likely to diminish competition by enabling firms more likely, more successfully or more completely to engage in coordinated interaction depends on whether market conditions, on the whole, are conducive to reaching terms of coordination and detecting and punishing deviations from those terms.

2.11 Conditions Conducive to Reaching Terms of Coordination

Firms coordinating their interactions need not reach complex terms concerning the allocation of the market output across firms or the level of the market prices but may, instead, follow simple terms such as a common price, fixed price differentials, stable market shares, or customer or territorial restrictions. Terms of coordination need not perfectly achieve the monopoly outcome in order to be harmful to consumers. Instead, the terms of coordination may be imperfect and incomplete—inasmuch as they omit some market participants, omit some dimensions of competition, omit some customers, yield elevated prices short of monopoly levels, or lapse into episodic price wars—and still result in significant competitive harm. At some point, however, imperfections cause the profitability of abiding by the terms of coordination to decrease and, depending on their extent, may make coordinated interaction unlikely in the first instance.

Market conditions may be conducive to or hinder reaching terms of coordination. For example, reaching terms of coordination may be facilitated by product or firm homogeneity and by existing practices among firms, practices not necessarily themselves antitrust violations, such as standardization of pricing or product variables on which firms could compete. Key information about rival firms and the market may also facilitate reaching terms of coordination. Conversely, reaching terms of coordination may be limited or impeded by product heterogeneity or by firms having substantially incomplete information about the conditions and prospects of their rivals' businesses, perhaps because of important differences among their current business operations. In addition, reaching terms of coordination may be limited or impeded by firm heterogeneity, for example, differences in vertical integration or the production of another product that tends to be used together with the relevant product.

2.12 Conditions Conducive to Detecting and Punishing Deviations

Where market conditions are conducive to timely detection and punishment of significant deviations, a firm will find it more profitable to abide by the terms of coordination than to deviate from them. Deviation from the terms of coordination will be deterred where the threat of punishment is credible. Credible punishment, however, may not need to be any more complex than temporary abandonment of the terms of coordination by other firms in the market.

Where detection and punishment likely would be rapid, incentives to deviate are diminished and coordination is likely to be successful. The detection and punishment of deviations may be facilitated by existing practices among firms themselves, not necessarily antitrust violations, and by the characteristics of typical transactions. For example, if key information about specific transactions or individual price or output levels is available routinely to competitors, it may be difficult for a firm to deviate secretly. If orders for the relevant product are frequent, regular and small relative to the total output of a firm in a market, it may be difficult for the firm to deviate in a substantial way without the knowledge of rivals and without the opportunity for rivals to react. If demand or cost fluctuations are relatively infrequent and small, deviations may be relatively easy to deter.

By contrast, where detection or punishment is likely to be slow, incentives to deviate are enhanced and coordinated interaction is unlikely to be successful. If demand or cost fluctuations are relatively frequent and large, deviations may be relatively difficult to distinguish from these other sources of market price fluctuations, and, in consequence, deviations may be relatively difficult to deter.

In certain circumstances, buyer characteristics and the nature of the procurement process may affect the incentives to deviate from terms of coordination. Buyer size alone is not the determining characteristic. Where large buyers likely would engage in long-term contracting, so that the sales covered by such contracts can be large relative to the total output of a firm in the market, firms may have the incentive to deviate. However, this only can be accomplished where the duration, volume and profitability of the business covered by such contracts are sufficiently large as to make deviation more profitable in the long term than honoring the terms of coordination, and buyers likely would switch suppliers.

In some circumstances, coordinated interaction can be effectively prevented or limited by maverick firms—firms that have a greater economic incentive to deviate from the terms of coordination

than do most of their rivals (*e.g.*, firms that are unusually disruptive and competitive influences in the market). Consequently, acquisition of a maverick firm is one way in which a merger may make coordinated interaction more likely, more successful, or more complete. For example, in a market where capacity constraints are significant for many competitors, a firm is more likely to be a maverick the greater is its excess or divertible capacity in relation to its sales or its total capacity, and the lower are its direct and opportunity costs of expanding sales in the relevant market.[19] This is so because a firm's incentive to deviate from price-elevating and output-limiting terms of coordination is greater the more the firm is able profitably to expand its output as a proportion of the sales it would obtain if it adhered to the terms of coordination and the smaller is the base of sales on which it enjoys elevated profits prior to the price-cutting deviation.[20] A firm also may be a maverick if it has an unusual ability secretly to expand its sales in relation to the sales it would obtain if it adhered to the terms of coordination. This ability might arise from opportunities to expand captive production for a downstream affiliate.

2.2 Lessening of Competition Through Unilateral Effects

A merger may diminish competition even if it does not lead to increased likelihood of successful coordinated interaction, because merging firms may find it profitable to alter their behavior unilaterally following the acquisition by elevating price and suppressing output. Unilateral competitive effects can arise in a variety of different settings. In each setting, particular other factors describing the relevant market affect the likelihood of unilateral competitive effects. The settings differ by the primary characteristics that distinguish firms and shape the nature of their competition.

2.21 Firms Distinguished Primarily by Differentiated Products

In some markets the products are differentiated, so that products sold by different participants in the market are not perfect substitutes for one another. Moreover, different products in the market may vary in the degree of their substitutability for one another. In this setting, competition may be non-uniform (*i.e.*, localized), so that individual sellers compete more directly with those rivals selling closer substitutes.[21]

A merger between firms in a market for differentiated products may diminish competition by enabling the merged firm to profit by unilaterally raising the price of one or both products above the premerger level. Some of the sales loss due to the price rise merely will be diverted to the product of the merger partner and, depending on relative margins, capturing such sales loss through merger may make the price increase profitable even though it would not have been profitable premerger. Substantial unilateral price elevation in a market for differentiated products requires that there be a significant share of sales in the market accounted for by consumers who regard the products of the merging firms as their first and second choices, and that repositioning of the non-parties' product lines to replace the localized competition lost through the merger be unlikely. The price rise will be greater the closer substitutes are the products of the merging firms, *i.e.*, the more the buyers of one product consider the other product to be their next choice.

2.211 Closeness of the Products of the Merging Firms

The market concentration measures articulated in Section 1 may help assess the extent of the likely competitive effect from a unilateral price elevation by the merged firm notwithstanding the fact that the affected products are differentiated. The market concentration measures provide a measure of this effect if each product's market share is reflective of not only its relative appeal as a first choice to consumers of the merging firms' products but also its relative appeal as a second choice, and hence as a competitive constraint to the first choice.[22] Where this circumstance holds, market concentration data fall outside the safeharbor regions of section 1.5, and the merging firms have a combined market share of at least thirty-five percent, the Agency will presume that a significant share of sales in the market are accounted for by consumers who regard the products of the merging firms as their first and second choices.

Purchasers of one of the merging firms' products may be more or less likely to make the other their second choice than market shares alone would indicate. The market shares of the merging firms' products may understate the competitive effect of concern, when, for example, the products of the merging firms are relatively more similar in their various attributes to one another than to other products in the relevant market. On the other hand, the market shares alone may overstate the competitive effects of concern when, for example, the relevant products are less similar in their attributes to one another than to other products in the relevant market.

Where market concentration data fall outside the safeharbor regions of section 1.5, the merging firms have a combined market share of at least thirty-five percent, and where data on product attributes and relative product appeal show that a significant share of purchasers of one merging firm's product regard the other as their second choice, then market share data may be relied upon to demonstrate that there is a significant share of sales in the market accounted for by consumers who would be adversely affected by the merger.

2.212 Ability of Rival Sellers to Replace Lost Competition

A merger is not likely to lead to unilateral elevation of prices of differentiated products if, in response to such an effect, rival sellers likely would replace any localized competition lost through the merger by repositioning their product lines.[23]

[19] But excess capacity in the hands of non-maverick firms may be a potent weapon with which to punish deviations from the terms of coordination.

[20] Similarly, in a market where product design or quality is significant, a firm is more likely to be an effective maverick the greater is the sales potential of its products among customers of its rivals, in relation to the sales it would obtain if it adhered to the terms of coordination. The likelihood of expansion responses by a maverick will be analyzed in the same fashion as uncommitted entry or committed entry (see sections 1.3 and 3) depending on the significance of the sunk costs entailed in expansion.

[21] Similarly, in some markets sellers are primarily distinguished by their relative advantages in serving different buyers or groups of buyers, and buyers negotiate individually with sellers. Here, for example, sellers may formally bid against one another for the business of a buyer, or each buyer may elicit individual price quotes from multiple sellers. A seller may find it relatively inexpensive to meet the demands of particular buyers or types of buyers, and relatively expensive to meet others' demands. Competition, again, may be localized: sellers compete more directly with those rivals having similar relative advantages in serving particular buyers or groups of buyers. For example, in open outcry auctions, price is determined by the cost of the second lowest-cost seller. A merger involving the first and second lowest-cost sellers could cause prices to rise to the constraining level of the next lowest-cost seller.

[22] Information about consumers' actual first and second product choices may be provided by marketing surveys, information from bidding structures, or normal course of business documents from industry participants.

[23] The timeliness and likelihood of repositioning responses will be analyzed using the same methodology as used in analyzing uncommitted entry or committed entry (see sections 1.3 and 3), depending on the significance of the sunk costs entailed in repositioning.

In markets where it is costly for buyers to evaluate product quality, buyers who consider purchasing from both merging parties may limit the total number of sellers they consider. If either of the merging firms would be replaced in such buyers' consideration by an equally competitive seller not formerly considered, then the merger is not likely to lead to a unilateral elevation of prices.

2.22 Firms Distinguished Primarily by Their Capacities

Where products are relatively undifferentiated and capacity primarily distinguishes firms and shapes the nature of their competition, the merged firm may find it profitable unilaterally to raise price and suppress output. The merger provides the merged firm a larger base of sales on which to enjoy the resulting price rise and also eliminates a competitor to which customers otherwise would have diverted their sales. Where the merging firms have a combined market share of at least thirty-five percent, merged firms may find it profitable to raise price and reduce joint output below the sum of their premerger outputs because the lost markups on the foregone sales may be outweighed by the resulting price increase on the merged base of sales.

This unilateral effect is unlikely unless a sufficiently large number of the merged firm's customers would not be able to find economical alternative sources of supply, *i.e.*, competitors of the merged firm likely would not respond to the price increase and output reduction by the merged firm with increases in their own outputs sufficient in the aggregate to make the unilateral action of the merged firm unprofitable. Such non-party expansion is unlikely if those firms face binding capacity constraints that could not be economically relaxed within two years or if existing excess capacity is significantly more costly to operate than capacity currently in use.[24]

3. Entry Analysis

3.0 Overview

A merger is not likely to create or enhance market power or to facilitate its exercise, if entry into the market is so easy that market participants, after the merger, either collectively or unilaterally could not profitably maintain a price increase above premerger levels. Such entry likely will deter an anticompetitive merger in its incipiency, or deter or counteract the competitive effects of concern.

Entry is that easy if entry would be timely, likely, and sufficient in its magnitude, character and scope to deter or counteract the competitive effects of concern. In markets where entry is that easy (*i.e.*, where entry passes these tests of timeliness, likelihood, and sufficiency), the merger raises no antitrust concern and ordinarily requires no further analysis.

The committed entry treated in this section is defined as new competition that requires expenditure of significant sunk costs of entry and exit.[25] The Agency employs a three step methodology to assess whether committed entry would deter or counteract a competitive effect of concern.

The first step assesses whether entry can achieve significant market impact within a timely period. If significant market impact would require a longer period, entry will not deter or counteract the competitive effect of concern.

The second step assesses whether committed entry would be a profitable and, hence, a likely response to a merger having competitive effects of concern. Firms considering entry that requires significant sunk costs must evaluate the profitability of the entry on the basis of long term participation in the market, because the underlying assets will be committed to the market until they are economically depreciated. Entry that is sufficient to counteract the competitive effects of concern will cause prices to fall to their premerger levels or lower. Thus, the profitability of such committed entry must be determined on the basis of premerger market prices over the long-term.

A merger having anticompetitive effects can attract committed entry, profitable at premerger prices, that would not have occurred premerger at these same prices. But following the merger, the reduction in industry output and increase in prices associated with the competitive effect of concern may allow the same entry to occur without driving market prices below premerger levels. After a merger that results in decreased output and increased prices, the likely sales opportunities available to entrants at premerger prices will be larger than they were premerger, larger by the output reduction caused by the merger. If entry could be profitable at premerger prices without exceeding the likely sales opportunities—opportunities that include pre-existing pertinent factors as well as the merger-induced output reduction—then such entry is likely in response to the merger.

The third step assesses whether timely and likely entry would be sufficient to return market prices to their premerger levels. This end may be accomplished either through multiple entry or individual entry at a sufficient scale. Entry may not be sufficient, even though timely and likely, where the constraints on availability of essential assets, due to incumbent control, makes it impossible for entry profitably to achieve the necessary level of sales. Also, the character and scope of entrants' products might not be fully responsive to the localized sales opportunities created by the removal of direct competition among sellers of differentiated products. In assessing whether entry will be timely, likely, and sufficient, the Agency recognizes that precise and detailed information may be difficult or impossible to obtain. In such instances, the Agency will rely on all available evidence bearing on whether entry will satisfy the conditions of timeliness, likelihood, and sufficiency.

3.1 Entry Alternatives

The Agency will examine the timeliness, likelihood, and sufficiency of the means of entry (entry alternatives) a potential entrant might practically employ, without attempting to identify who might be potential entrants. An entry alternative is defined by the actions the firm must take in order to produce and sell in the market. All phases of the entry effort will be considered, including, where relevant, planning, design, and management; permitting, licensing, and other approvals; construction, debugging, and operation of production facilities; and promotion (including necessary introductory discounts), marketing, distribution, and satisfaction of customer testing and qualification requirements.[26] Recent examples of entry, whether successful or unsuccessful, may provide a useful starting point for identifying the necessary actions, time requirements, and characteristics of possible entry alternatives.

3.2 Timeliness of Entry

In order to deter or counteract the competitive effects of concern, entrants quickly must achieve a significant impact on price in the relevant market. The Agency generally will consider

[24] The timeliness and likelihood of non-party expansion will be analyzed using the same methodology as used in analyzing uncommitted or committed entry (*see* Sections 1.3 and 3) depending on the significance of the sunk costs entailed in expansion.

[25] Supply responses that require less than one year and insignificant sunk costs to effectuate are analyzed as uncommitted entry in section 1.3.

[26] Many of these phases may be undertaken simultaneously.

timely only those committed entry alternatives that can be achieved within two years from initial planning to significant market impact.[27] Where the relevant product is a durable good, consumers, in response to a significant commitment to entry, may defer purchases by making additional investments to extend the useful life of previously purchased goods and in this way deter or counteract for a time the competitive effects of concern. In these circumstances, if entry only can occur outside of the two year period, the Agency will consider entry to be timely so long as it would deter or counteract the competitive effects of concern within the two year period and subsequently.

3.3 Likelihood of Entry

An entry alternative is likely if it would be profitable at premerger prices, and if such prices could be secured by the entrant.[28] The committed entrant will be unable to secure prices at premerger levels if its output is too large for the market to absorb without depressing prices further. Thus, entry is unlikely if the minimum viable scale is larger than the likely sales opportunity available to entrants.

Minimum viable scale is the smallest average annual level of sales that the committed entrant must persistently achieve for profitability at premerger prices.[29] Minimum viable scale is a function of expected revenues, based upon premerger prices,[30] and all categories of costs associated with the entry alternative, including an appropriate rate of return on invested capital given that entry could fail and sunk costs, if any, will be lost.[31]

Sources of sales opportunities available to entrants include: (a) The output reduction associated with the competitive effect of concern,[32] (b) entrants' ability to capture a share of reasonably expected growth in market demand,[33] (c) entrants' ability securely to divert sales from incumbents, for example, through vertical integration or through forward contracting, and (d) any additional anticipated contraction in incumbents' output in response to entry.[34] Factors that reduce the sales opportunities available to entrants include: (a) The prospect that an entrant will share in a reasonably expected decline in market demand, (b) the exclusion of an entrant from a portion of the market over the long term because of vertical integration or forward contracting by incumbents, and (c) any anticipated sales expansion by incumbents in reaction to entry, either generalized or targeted at customers approached by the entrant, that utilizes prior irreversible investments in excess production capacity. Demand growth or decline will be viewed as relevant only if total market demand is projected to experience long-lasting change during at least the two year period following the competitive effect of concern.

3.4 Sufficiency of Entry

Inasmuch as multiple entry generally is possible and individual entrants may flexibly choose their scale, committed entry generally will be sufficient to deter or counteract the competitive effects of concern whenever entry is likely under the analysis of section 3.3. However, entry, although likely, will not be sufficient if, as a result of incumbent control, the tangible and intangible assets required for entry are not adequately available for entrants to respond fully to their sales opportunities. In addition, where the competitive effect of concern is not uniform across the relevant market, in order for entry to be sufficient, the character and scope of entrants' products must be responsive to the localized sales opportunities that include the output reduction associated with the competitive effect of concern. For example, where the concern is unilateral price elevation as a result of a merger between producers of differentiated products, entry, in order to be sufficient, must involve a product so close to the products of the merging firms that the merged firm will be unable to internalize enough of the sales loss due to the price rise, rendering the price increase unprofitable.

4. Efficiencies

The primary benefit of mergers to the economy is their efficiency-enhancing potential, which can increase the competitiveness of firms and result in lower prices to consumers. Because the antitrust laws, and thus the standards of the Guidelines, are designed to proscribe only mergers that present a significant danger to competition, they do not present an obstacle to most mergers. As a consequence, in the majority of cases, the Guidelines will allow firms to achieve available efficiencies through mergers without interference from the Agency.

Some mergers that the Agency otherwise might challenge may be reasonably necessary to achieve significant net efficiencies. Cognizable efficiencies include, but are not limited to, achieving economies of scale, better integration of production facilities, plant specialization, lower transportation costs, and similar efficiencies relating to specific manufacturing, servicing, or distribution operations of the merging firms. The Agency may also consider claimed efficiencies resulting from reductions in general selling, administrative, and overhead expenses, or that otherwise do not relate to specific manufacturing, servicing, or distribution operations of the merging firms, although, as a practical matter, these types of efficiencies may be difficult to demonstrate. In addition, the Agency will reject claims of efficiencies if equivalent or comparable savings can reasonably be achieved by the parties through other means. The expected net efficiencies must be greater the more significant are the competitive risks identified in sections 1–3.

5. Failure and Exiting Assets

5.0 Overview

Notwithstanding the analysis of sections 1–4 of the Guidelines, a merger is not likely to create or enhance market power or to facilitate its exercise, if imminent failure, as defined below, of one of the merging firms would cause the assets of that firm to exit the relevant market. In such circumstances,

[27] Firms which have committed to entering the market prior to the merger generally will be included in the measurement of the market. Only committed entry or adjustments to pre-existing entry plans that are induced by the merger will be considered as possibly deterring or counteracting the competitive effects of concern.

[28] Where conditions indicate that entry may be profitable at prices below premerger levels, the Agency will assess the likelihood of entry at the lowest price at which such entry would be profitable.

[29] The concept of minimum viable scale ("MVS") differs from the concept of minimum efficient scale ("MES"). While MES is the smallest scale at which average costs are minimized, MVS is the smallest scale at which average costs equal the premerger price.

[30] The expected path of future prices, absent the merger, may be used if future price changes can be predicted with reasonable reliability.

[31] The minimum viable scale of an entry alternative will be relatively large when the fixed costs of entry are large, when the fixed costs of entry are largely sunk, when the marginal costs of production are high at low levels of output, and when a plant is underutilized for a long time because of delays in achieving market acceptance.

[32] Five percent of total market sales typically is used because where a monopolist profitably would raise price by five percent or more across the entire relevant market, it is likely that the accompanying reduction in sales would be no less than five percent.

[33] Entrants' anticipated share of growth in demand depends on incumbents' capacity constraints and irreversible investments in capacity expansion, as well as on the relative appeal, acceptability and reputation of incumbents' and entrants' products to the new demand.

[34] For example, in a bidding market where all bidders are on equal footing, the market share of incumbents will contract as a result of entry.

post-merger performance in the relevant market may be no worse than market performance had the merger been blocked and the assets left the market.

5.1 Failing Firm

A merger is not likely to create or enhance market power or facilitate its exercise if the following circumstances are met: (1) The allegedly failing firm would be unable to meet its financial obligations in the near future; (2) it would not be able to reorganize successfully under Chapter 11 of the Bankruptcy Act; [35] (3) it has made unsuccessful good-faith efforts to elicit reasonable alternative offers of acquisition of the assets of the failing firm [36] that would both keep its tangible and intangible assets in the relevant market and pose a less severe danger to competition than does the proposed merger; and (4) absent the acquisition, the assets of the failing firm would exit the relevant market.

5.2 Failing Division

A similar argument can be made for "failing" divisions as for failing firms. First, upon applying appropriate cost allocation rules, the division must have a negative cash flow on an operating basis. Second, absent the acquisition, it must be that the assets of the division would exit the relevant market in the near future if not sold. Due to the ability of the parent firm to allocate costs, revenues, and intracompany transactions among itself and its subsidiaries and divisions, the Agency will require evidence, not based solely on management plans that could be prepared solely for the purpose of demonstrating negative cash flow or the prospect of exit from the relevant market. Third, the owner of the failing division also must have complied with the competitively-preferable purchaser requirement of section 5.1.

[35] 11 U.S.C. 1101–1174 (1988).

[36] Any offer to purchase the assets of the failing firm for a price above the liquidation value of those assets—the highest valued use outside the relevant market or equivalent offer to purchase the stock of the failing firm—will be regarded as a reasonable alternative offer.

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federal register

Thursday
September 10, 1992

Part III

Environmental Protection Agency

40 CFR Part 260, et al.

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 266, 271 and 279

[FRL-4153-6]

RIN: 2050-AC17

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Agency is promulgating a final listing decision for used oils that are recycled and is simultaneously promulgating standards for the management of used oil under RCRA section 3014. EPA has made a final listing decision for used oils that are recycled based upon the technical criteria provided in sections 1004 and 3001 of RCRA. EPA determined that recycled used oil does not have to be listed as a hazardous waste since the used oil management standards issued in this rulemaking are adequately protective of human health and the environment. These standards cover used oil generators, transporters, processors and re-refiners, burners, and marketers. These standards are promulgated under the authority of section 3014 of RCRA and will be codified in a new part 279 of chapter 40 of the Code of Federal Regulations. When these management standards go into effect, service station dealers who collect used oil from do-it-yourself (DIY) generators and who are in compliance with the standards promulgated, may be eligible for the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 114(c) liability exemption. EPA is continuing to evaluate the potential hazards associated with management of used oil. When this analysis is completed, the Agency will publish Notice(s) of Data Availability in the Federal Register over the next several months, as necessary. EPA will also, at that time, solicit opinion from the public on what, if any, additional steps may be necessary regarding used oil management.

EFFECTIVE DATE: March 8, 1993.

ADDRESSES: The regulatory docket for this rulemaking is available for public inspection at room 2427, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The docket number is F-92-UO2F-FFFFF. The public must make an appointment to review docket materials by calling (202) 260-9327. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, Office of Solid Waste, U.S. Environmental Protection Agency 401 M Street, SW., Washington, DC 20460; Telephone (800) 424-9346 (toll free) or, in the Washington, DC, metropolitan area at (703) 920-9810.

For information on specific aspects of this rule, contact Ms. Rajani D. Joglekar, telephone (202) 260-3516, or Ms. Eydie Pines, telephone (202) 260-3509, U.S. EPA, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Authority

This regulatory decision and the regulations promulgated today are issued under the authority of sections 1004, 1006, 2002, 3001, 3014, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and as amended by the Used Oil Recycling Act, as amended, 42 U.S.C. 6901, 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937 through 6939 and 6974.

II. Background

A. Authorities and Regulations Covering Used Oil Management

1. Statutory Authority

Section 3014 of RCRA requires EPA to establish standards applicable to recycled used oil that will protect public health and the environment and, to the extent possible within that context, not discourage used oil recycling. Section 3014 was added to the RCRA statute by the Used Oil Recycling Act (UORA) of 1980. The UORA required the Agency to establish performance standards and other requirements "as may be

necessary to protect the public health and the environment from hazards associated with recycled oil" as long as such regulations "do not discourage the recovery or recycling of used oil."

The Hazardous and Solid Waste Amendments of 1984 (HSWA) reemphasized that the protection of human health and the environment was to be of primary concern in the regulation of hazardous waste. Specific to used oil, HSWA slightly altered the language of RCRA section 3014 to direct the Administrator to promulgate regulations as may be necessary to protect human health and the environment from hazards associated with recycled oil. In developing such regulations, the Administrator shall conduct an analysis of the economic impact of the regulations on the oil recycling industry. The Administrator shall ensure that such regulations do not discourage the recovery or recycling of used oil *consistent with the protection of human health and the environment.* (Emphasis added to highlight HSWA language amending RCRA section 3014(a).)

EPA is therefore directed to promulgate standards for the handling and management of recycled oil. Section 1004 of RCRA, in defining the term "recycled oil," includes used oil being reused for any purpose, including used oil being re-refined or being processed into fuel. EPA believes that section 3014 also provides authority for establishing management standards that specifically include used oil being stored, collected or otherwise managed prior to recycling.

2. Regulatory Actions Related to Used Oil

On December 18, 1978, EPA initially proposed guidelines and regulations for the management of hazardous wastes as well as specific rules for the identification and listing of hazardous wastes under section 3001 of the Resource Conservation and Recovery Act (RCRA) (43 FR 58946). At that time, EPA proposed to list waste lubricating oil and waste hydraulic and cutting oil [1] as hazardous wastes on the basis of their toxicity. In addition, the Agency proposed recycling regulations to regulate (1) the incineration or burning of used lubricating, hydraulic, transformer, transmission, or cutting oil that was hazardous and (2) the use of waste oils in a manner that constituted disposal.[2]

In the May 19, 1980 regulations (45 FR 33084), EPA decided to defer promulgation of the recycling regulations for waste oils to consider fully whether waste- and use-specific standards may be implemented in lieu of imposing the full set of Subtitle C regulations on potentially recoverable and valuable materials. At the same time, EPA deferred the listing of waste oil for disposal so that the entire waste oil issue could be addressed at one time. Under the May 19, 1980 regulations, however, any waste oil exhibiting one of the characteristics of hazardous waste (ignitability, corrosivity, reactivity, and toxicity) that was disposed, or accumulated, stored, or treated prior to disposal, became regulated as a hazardous waste subject to all applicable Subtitle C regulations.

As explained above, HSWA made protection of human health and the environment the prominent concern in the Agency's regulatory decisions for used oil and required EPA to propose whether to identify or list used automobile and truck crankcase oil by November 8, 1985. HSWA also required EPA to make a final determination as to whether to identify or list any or all used oils by November 8, 1986. On November 29, 1985 (50 FR 49258), EPA proposed to list all used oils as hazardous waste, including petroleum-derived and synthetic oils, based on the presence of toxic constituents at levels of concern from contamination during use and adulteration after use. Also on November 29, 1985, the Agency proposed management standards for recycled used oil (50 FR 49212) and issued final regulations, incorporated at 40 CFR part 266, subpart E, prohibiting the burning of off-specification used oil fuels [3] in non-industrial boilers and furnaces (50 FR 49164). Marketers of used oil fuel and industrial burners of off-specification fuel are required to notify EPA of their activities and to comply with certain notice and recordkeeping requirements. Used oils that meet the fuel oil specification are exempt from most of the 40 CFR part 266, subpart E regulations.

On March 10, 1986 (51 FR 8206), the Agency published a Supplemental Notice requesting comments on additional aspects of the proposed listing of used oil as hazardous waste. In particular, commenters to the November 29, 1985, proposal suggested that EPA consider a regulatory option of only listing used oil as a hazardous waste when disposed, while promulgating special management standards for used oil that is recycled.

On November 19, 1986, EPA issued a decision not to list as a hazardous waste used oil that is recycled (51 FR 41900). The Agency determined that used oil being recycled should not be listed as a hazardous waste under RCRA. The EPA stated in the November 1986 decision that the Agency intended to issue recycled used oil management standards and was conducting studies necessary to determine what standards are appropriate under § 3014 of RCRA and to determine whether used oil being disposed of should be listed as a RCRA hazardous waste, or regulated under other statutes. At that time, it was the Agency's belief that the stigmatic effects associated with a hazardous waste listing might discourage the recycling of used oil, thereby resulting in increased disposal of used oil in uncontrolled manners. EPA stated that several residues, wastewaters, and sludges associated with the recycling of used oil may be evaluated to determine if a hazardous waste listing was necessary, even if used oil was not listed as a hazardous waste. EPA also outlined a plan that included making the determination whether to list used oil being disposed as hazardous waste and promulgation of special management standards for recycled oil.

EPA's decision not to list used oil as a hazardous waste based on the potential stigmatic effects was challenged by the Hazardous Waste Treatment Council, the Association of Petroleum Re-refiners, and the Natural Resources Defense Council. The petitioners claimed that (1) the language of RCRA indicated that in determining whether to list used oil as a hazardous waste, EPA may consider technical characteristics of hazardous waste, but not the "stigma" that a hazardous listing might involve, and (2) that Congress intended EPA to consider the effects of listing on the recycled oil industry only after the initial listing decision.

On October 7, 1988, the Court of Appeals for the District of Columbia found that EPA acted contrary to law in its determination not to list used oil under RCRA section 3001 based on the stigmatic effects. (See *Hazardous Waste Treatment Council* v. *EPA*, 861 F.2d 270 (D.C. Cir. 1988) [HWTC I].) The court ruled that EPA must determine whether

[1] The term "waste oil" included both used and unused oils that may no longer be used for their original purpose.

[2] "Use in a manner constituting disposal" means the placement of hazardous waste directly onto the land in a manner constituting disposal or the use of the solid waste to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land [40 CFR 261.2(c)(1)].

[3] Used Oil that exceeds any of the following specification levels is considered to be "off-specification" used oil under 40 CFR 266.40(e): Arsenic—5 ppm, Cadmium—2 ppm, Chromium—10 ppm, Lead—100 ppm, Flash Point-100 °F minimum, Total Halogens—4,000 ppm.

to list any used oils based on the technical criteria for waste listings specified in the statute.

After the 1988 court decision, EPA began to re-evaluate its basis for making a listing determination for used oil. EPA reviewed the statute, the proposed rule, and the many comments received on the proposed rule. Those comments indicated numerous concerns with the proposed listing approach. One of the most frequent concerns voiced by commenters was related to the quality and "representativeness" of the data used by EPA to characterize used oils in 1985. Numerous commenters indicated that "their oils" were not represented by the data and, if they were represented, those oils were characterized after being mixed with other more contaminated oils or with other hazardous wastes. Many commenters submitted data demonstrating that the used oils they generate, particularly industrial used oils, did not contain high levels of toxicants of concern.

In addition, the Agency recognized that much of the information in the 1985 used oil composition data was more than five years old, as most of the information was collected prior to 1985. Since the time of that data gathering effort, used automotive oil composition may have been affected by the phase-down of lead in gasoline. The Agency also recognized the need to collect analytical data addressing specific classes of used oils as collected and stored at the point of generation (*i.e.*, at the generator's facility).

Finally, the promulgation of the toxicity characteristic (TC) (55 FR 11798, March 29, 1990) is known to identify certain used oils as hazardous waste. Due to the possibility of changes in used oil composition since the Agency's 1985 proposed listing decision and the new TC, the Agency recognized that additional data on used oil characterization may be needed prior to making a final hazardous waste listing determination.

On September 23, 1991, EPA published a Supplemental Notice of Proposed Rulemaking for the identification and listing of used oil and for management standards for recycled used oil (56 FR 48000). The 1991 Supplemental Notice presented supplemental information gathered by EPA and provided to EPA by individuals commenting on previous notices on the listing of used oil and used oil management standards. As discussed above, numerous commenters on the 1985 proposal to list used oil as hazardous contended that the broad listing of all used oils unfairly subjects them to stringent Subtitle C regulations because their used oils are not hazardous. Based on those comments, the Agency collected a variety of additional information regarding various types of used oil, their management, and their potential health and environmental effects when mismanaged. The 1991 Supplemental Notice presented this new information to the public and requested comment on the information, particularly if and how the information suggests new concerns that EPA should consider in deciding whether to finalize all or part of its 1985 proposal to list used oil as a hazardous waste.

In addition, the 1991 Supplemental Notice expanded upon the November 29, 1985 (50 FR 49258) proposal to list used oils as hazardous and the March 10, 1986 (51 FR 8206) Supplemental Notice by discussing regulatory alternatives not previously presented in the **Federal Register**. Based on the public comments received relative to these two notices, the Agency investigated several important aspects of used oil regulation. The Supplemental Notice also contained a request for comments on additional issues related to the "mixture rule" (40 CFR 261.3(a)(2)(iii)), on test methods for determining halogen levels in used oils, and on new data on the composition of used oil and used oil processing residuals. For these aspects, the Agency identified alternative approaches that were not presented explicitly in the earlier notices. Those new alternatives were presented in the 1991 Supplemental Notice.

The 1991 Supplemental Notice also discussed the Agency's proposal to amend 40 CFR 261.32 by adding four waste streams from the reprocessing and re-refining of used oil to the list of hazardous wastes from specific sources. The wastes from the reprocessing and re-refining of used oil include process residuals from the gravitational or mechanical separation of solids, water, and oil (K152); spent polishing media used to finish used oil (K153); distillation bottoms from used oil processing and re-refining (K154); and treatment residues from primary wastewater treatment (K155).

The 1991 Supplemental Notice also included a description of some of the management standards (in addition to or in place of those proposed in 1985) that EPA considered in promulgating today's final rule.

On May 20, 1992, EPA proposed a Hazardous Waste Identification Rule describing two alternative approaches for hazardous waste identification under RCRA. The first proposed approach would establish concentration based exclusion criteria (CBEC) for listed hazardous wastes, waste mixtures, derivatives, and contaminated media. The second approach an expanded characteristic option (ECHO) would establish "characteristic" levels for listed hazardous wastes, waste mixtures, derivatives, and contaminated media. (57 FR 21450). Depending upon which approach the Agency finalizes, the manner in which EPA regulates mixtures of used oil and hazardous waste may change.

B. Summary of May 20, 1992 Federal Register Notice (Final Listing Decision for Used Oils Destined for Disposal)

On May 20, 1992, EPA published a final rule that addressed the listing of used oils that are disposed, excluded non-terne plated used oil filters that have been drained to remove used oil from the definition of hazardous waste, and deferred a final listing determination on residuals from the processing and re-refining of used oil (57 FR 21524). Four separate actions were taken and are discussed below.

First, the Agency promulgated a final decision not to list used oils destined for disposal. This decision was based primarily upon the finding that all used oils do not typically and frequently meet the technical criteria for listing a waste as hazardous. In making the final listing determination for used oil destined for disposal, EPA also gave considerable attention to the current federal regulations governing the management of used oils that are disposed. EPA evaluated the technical criteria for listing in light of the current regulatory structure that controls the management of used oils and concluded that any plausible mismanagement of used oil that is destined for disposal is addressed by current requirements. Existing regulations that cover used oil destined for disposal are discussed briefly at the end of this section. In addition, if a used oil that is destined for disposal exhibits a characteristic, it is regulated as a hazardous waste under subtitle C.

Second, the Agency decided to defer a decision on listing and management standards for used oil that is recycled (this decision is included in today's rule).

Third, the Agency promulgated a final exemption from the definition of hazardous waste in § 261.4 for certain used oil filters. The filters that received the exemption are non-terne-plated used oil filters that have been hot-drained to remove used oil. (Terne is an alloy of tin and lead.) Hot-drained means draining used oil from a filter while the engine is at operating temperature, when oil flows easily. Based on data submitted to EPA, non-terne-plated, hot-drained used oil

filters do not typically and frequently exhibit the Toxicity Characteristic.

Fourth, the Agency announced its deferral of a final decision on whether or not to list residuals from the processing and re-refining of used oil. The Agency stated that it will continue to evaluate the composition of used oil recycling residues and the management of these residues. The reason for continued evaluation of residuals is that recycling techniques and waste management practices that evolved during the past six years have resulted in residual composition changes.

C. Current Federal Regulations Governing Disposal of Used Oil

Currently, there are several regulatory programs in place to control the storage and transportation of used oil, to protect against releases to the ground, ground water, and surface waters, to protect against improper disposal of used oils, to prevent the burning of used oils with high levels of toxic constituents in certain units, and to control the management of used oils containing PCB's. Several of these programs have been proposed and/or promulgated since 1985, and some have been in place since before 1985. The Agency has decided that these current regulations are protective, but are not complete or sufficient to protect human health and the environment from potential mismanagement of used oils that are recycled. Therefore, in addition to the existing regulations, used oil handlers will have to comply with additional management standards that EPA is promulgating today, such as recordkeeping and analysis requirements, and a requirement for containment consisting of impervious floor and dikes/berms. The current regulatory programs are described below.

The storage of used oil in underground tanks is controlled under subtitle I of RCRA (40 CFR part 280). These regulations require that underground tanks be properly maintained, operated, protected from corrosion, and that any spills are properly cleaned up. Other existing storage tank standards are found under the Clean Water Act Spill Prevention Control and Countermeasures (SPCC) requirements. SPCC requirements regulate the storage of materials, including used oil, in aboveground *and* in underground tanks under certain circumstances. The Clean Water Act also requires reporting of releases of oil into navigable waters if a sheen appears on the water, if any water quality standards are violated, or if a sludge is deposited beneath the surface of the water. The recently enacted Oil Pollution Act revised the SPCC requirements of the Clean Water Act.

Regulations promulgated pursuant to MARPOL 73/78, Annex I, act to control shipboard management of used oil and releases of used oil to navigable waters. Bilge slops are a commonly generated waste on-board ships that contain used oil; MARPOL prevents this waste from being discharged into the sea in an unrestricted manner.

The transport of used oil is regulated under the Department of Transportation's Hazardous Materials Transportation Act (HMTA). Used oil that meets the criteria for being "combustible" or "flammable" is regulated under DOT requirements for classification, packaging, marking, labeling, shipping papers, placarding, recordkeeping and reporting.

The burning of used oil for energy recovery is subject to existing standards under RCRA (40 CFR part 266, subpart E). These standards include requirements for marketers of used oil, such as notification, analysis, recordkeeping, and invoices for each shipment. Off-specification used oil must be burned in industrial boilers or furnaces only. The "specification" levels for used oil that will be burned for energy recovery include levels for metals, halogens, and flash point. These existing standards promulgated in 1985 are recodified in part 279 today.

The manufacture, use, import, and disposal of polychlorinated biphenyls (PCBs) in used oils are controlled under the Toxic Substances Control Act (TSCA). TSCA controls the manufacture, import, use, and disposal of oils containing over 50 ppm PCBs. In addition, TSCA requires reporting of any spill of material containing 50 ppm or greater PCBs, into sewers, drinking water, surface water, grazing lands, or vegetable gardens. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requires reporting of any 1-pound spill of PCBs into the environment. Note that used oils containing less than 50 ppm of PCBs are covered under RCRA.

Used oils that are contaminated with CERCLA hazardous substances (*e.g.*, due to the presence of elevated levels of lead) are subject to CERCLA release reporting requirements. Therefore, releases of used oil containing such contaminants (*e.g.*, lead) into the environment in quantities greater than the reportable quantity for the contaminant must be reported to the National Response Center. The current RQs for CERCLA hazardous substances are listed in 40 CFR 302.4. In addition, under 40 CFR part 110, any discharge of oil that violates applicable water quality standards or causes a film or sheen on a water surface must be reported to the National Response Center.

As mentioned previously, used oil handlers will have to comply with all existing regulations (including any applicable State and local regulations), and in addition, the new management standards for recycled oil promulgated today. For the reasons discussed in more detail below, EPA believes that this network of regulations will be sufficient to ensure protection of human health and the environment.

III. Summary of Major Comments to 1985 Proposal and 1991 Supplemental Notice

A. Comments Received in Response to the 1985 Proposed Rulemaking

1. Comments on 1985 Proposed Listing Decision

On November 29, 1985 (50 FR 49239), EPA proposed to list all used oils as hazardous waste, including petroleum-derived and synthetic oils, based on the presence of toxic constituents at levels of concern as a result of contamination during and adulteration after use. In 1985, the Agency also proposed special management standards for used oils that are recycled. Essentially, used oils that are disposed would have been subject to full subtitle C regulation, while recycled used oils could be managed in accordance with the proposed management standards developed and proposed under the authority of RCRA § 3014.

Many comments were received on the various aspects of the proposed listing of used oil, which are summarized as follows. Most commenters opposed the listing of used oil as a hazardous waste. The reasons given included that EPA's sampling was unrepresentative and flawed (*i.e.*, used oil samples were taken from storage tanks at used oil facilities rather than from the point of generation), used oil is no more hazardous than virgin oil, and the belief that the levels of constituents EPA found in used oils that were sampled and analyzed do not present a threat to human health. Some commenters asserted that EPA's concern is not with used oil itself but the mixing of used oil with other constituents that may render the used oil hazardous only because of post-use adulteration. Therefore, instead of listing all used oils, commenters recommended that EPA should list used oils as hazardous only if other

substances have been added after the oil's initial use.

A large number of commenters challenged the scope of the listing (*i.e.*, definition) and provided a number of examples where certain used oils should not be included in the listing because they do not contain constituents of concern at concentrations exceeding health-based levels that would cause the used oil to be listed. Some commenters proposed that only those used oils that contain toxic constituents, such as lead, arsenic, cadmium, chromium, 1,1,1-trichloroethane, trichloroethylene, tetrachloroethylene, toluene, and naphthalene, should be included in the listing. A number of commenters requested that in the proposed definition of used oil, the phrase "but is not limited to" should be stricken because it creates tremendous uncertainty as to what constitutes a used oil. Commenters also challenged EPA and indicated that the Agency exceeded its statutory authority by including synthetic and other non-petroleum derived used oils in the definition of used oil. Commenters also requested that used oil destined for recycling be excluded from the definition of used oil. A few commenters also requested that food grade oils be excluded because the Food and Drug Administration regulates these oils and requires that they meet health standards based on human consumption because they may contact food products. A number of commenters requested that EPA exclude dielectric waste oil from the listing because electrical equipment is not a source of the contaminants of concern and that dielectric oils are already controlled by the Toxic Substances Control Act.

A number of commenters expressed concern regarding EPA's proposed regulatory scope of mixtures of used oil and other materials. The commenters were mixed on their support of EPA's proposed exclusion for wipers contaminated with used oil. Those that supported the exemption stated that as long as a wiper contains no free liquid, as determined by the paint filter test, it presents a minimal threat to human health or the environment. These commenters also expressed the belief that there should be no set concentration limit for used oil in wipers, but the exclusion should be based on whether the wiper contains free liquids. Those that opposed the exclusion indicated that contaminated wipers can contain significant quantities of PCBs and other toxic constituents and therefore present a risk to health.

Many commenters supported EPA's proposal to exempt wastewaters containing *de minimis* amounts of used oil from the definition of hazardous waste. However, commenters stated that no set concentration limit should be established as a *de minimis* level. A few commenters opposed this exclusion on the grounds that it could present a threat to human health and the environment. Some commenters requested that the halogen level promulgated as part of the rebuttable presumption for used oil fuels be increased because *de minimis* amounts of solvents may inadvertently become mixed with used oil.

There was overwhelming support to exempt mixtures of sorptive minerals and used oil. However, some commenters requested that the word minerals be replaced with materials. The commenters' rationale was that minerals are actually adsorbents, meaning attracted to the surface, whereas other materials, such as treated wood and paper fiber, are absorbents, meaning becoming part of the material and more difficult to remove. Thus, these commenters asserted, non-mineral sorbent materials also would pose no risk to the environment.

2. Major Comments on 1985 Proposed Management Standards for Recycled Used Oil

On November 29, 1985 (50 FR 49212), EPA proposed a comprehensive set of management standards for various entities handling used oils. These proposed standards were tailored after the hazardous waste management standards of subtitle C, and included requirements for notification, tracking, recordkeeping, preparedness and prevention, testing, storage, and closure. The handlers included generators, transporters, recyclers, marketers, burners, and road oilers.

a. Generator Standards. Concerning management standards for generators, commenters were generally supportive of EPA's proposed regulations except for the following comments relating to specific provisions. Commenters expressed concern that the quantity limit for small quantity generators was too low. Commenters also advocated a change from determining a generator's regulatory status on a monthly basis to a 12-month average limit to account for periodic and/or seasonal variations in generation patterns. Commenters thought that the proposed 90-day time limit on accumulation did not provide enough time for generators to accumulate a full tank of used oil. Because some facilities generate small amounts of used oil, some commenters felt that a 180- or 270-day time limit would be more appropriate.

One commenter stated that the requirement to empty a leaking or otherwise unfit for service tank within 24 hours is unreasonable and more strict than the hazardous waste requirements. One commenter stated that it is unreasonable to require that whenever a leak in a tank system occurs, the whole tank system must then be subject to the standards for new tank systems. An example of this inequity, provided by the commenters, could occur if the tank system develops a leak because of a faulty gasket and then the whole system has to be replaced rather than merely replacing the gasket. A few commenters expressed the opinion that the proposed standards for used oil storage tanks far exceed the necessary standards for protection of human health and the environment. Some commenters stated that requiring secondary containment for newly installed tanks beyond the SPCC requirements amounted to regulatory overkill. One commenter requested EPA to provide clarification on the definition of tank because many tank-like structures may be pulled into the system although they may not warrant regulation. Many commenters expressed concern that the regulation of storage in underground tanks under RCRA § 3014 would be duplicative of the standards promulgated under Subtitle I of RCRA. Many commenters disagreed with EPA that ground-water monitoring provides a superior approach to leak detection.

b. Transporter Standards. Some commenters thought that the 10-day time limit for storing used oil at transfer facilities was an inadequate period of time for transporters to accumulate and consolidate sufficient quantities of used oil. One commenter requested that an exemption be provided for generators that transport used oil from isolated locations to a central storage site, which would reduce the regulatory burden on oil and gas production operations, contract drillers, gas processors, and pipeline operators.

Commenters expressed concern with the requirement proposed in 1985 that collectors provide recycling facilities with lists of their customers. This could lead to solicitation of the collector's customers by used oil recyclers, which could adversely impact the collectors.

c. Recycling Facility Standards. A few commenters requested that EPA allow for the co-management of used oil with hazardous waste under a permit-by-rule rather than requiring such facilities to apply for and obtain a modification to their existing Subtitle C operating permit. Commenters also challenged the fact that while EPA required analysis of

halogens, there is no EPA-approved test method for halogens. Some commenters also objected to the proposed requirement that facilities that manage both used oil and other hazardous wastes test their used oil for indicator parameters for each hazardous waste stream. Although many comments were received concerning testing frequencies, commenters generally did not agree on any particular frequency or on whether or not the Agency should impose a set testing frequency.

EPA received many comments both for and against the proposed requirements that used oil recycling facilities that are not in compliance with the permit-by-rule provisions on the effective date of the rule comply with the interim status provisions of 40 CFR part 265. A few commenters pointed out that corrective action for releases of used oil to the environment was not adequately addressed in the 1985 proposed rulemaking.

d. Dust Suppression. The commenters were generally in favor of banning used oil for dust suppression. One commenter requested that EPA consider a case-by-case approval of used oil as a dust suppressant provided the activity is permitted and waste analysis is conducted. A state agency recommended that the dust suppression ban be extended to refined oil and oil/water mixtures.

B. Comments Received in Response to 1991 Supplemental Notice

1. Listing Used Oil

The Supplemental Notice of September 23, 1991 (56 FR 48041), presented three options for identifying used oil as a hazardous waste. Option One was to list all used oils as proposed on November 29, 1985 (50 FR 49239), based on the potential for adulteration during use and environmental damage when mismanaged. Option Two was to list categories of used oil that were found to be "typically and frequently" hazardous because of the presence of lead, PAHs, arsenic, cadmium, chromium, and benzene. "Typically and frequently" was defined to mean that 50 percent or more of the samples in a used oil category exceeded the levels of concern. Under Option Three, the Agency proposed not to list used oils as hazardous, but rely on management standards developed under section 3014 of RCRA to control mismanagement of oil.

Commenters overwhelmingly supported Option Three, not to list used oil as a hazardous waste, but rely on management standards. Many of these commenters suggested that EPA should encourage recycling through education, collection, and management standards instead of a hazardous waste listing. Many commenters expressed concern that listing used oil would have a negative effect on the used oil recycling system. These commenters stated that due to excessive liability and disposal costs associated with handling hazardous wastes, they would be forced out of business or out of the used oil management system. They stated that this would result in having fewer collection centers resulting in decreased acceptance of DIY-generated used oil, and may lead to further mismanagement. A few commenters pointed out that their lease prohibits the handling of hazardous materials or wastes and the listing of used oil as a hazardous waste would thus force them out of business or require them to negotiate a costly new lease. Additionally, some commenters, primarily service stations and oil changers, are currently voluntarily accepting DIY-generated used oil. They stated that listing used oil as a hazardous waste would lead to the discontinuation of this service because of the potential liability and the increased cost of handling used oil.

Some commenters noted that DIY-generated used oil presents the biggest threat to human health and the environment because it is often disposed of improperly. Another view point shared by many commenters was that used oil is a resource that is recyclable as lube oil feedstock or as a fuel substitute, and EPA should not designate a valuable commodity as hazardous waste.

A few commenters stated that used oil should not be listed because it is no longer hazardous due to EPA's lead phase-down program. In addition, EPA's analyses of used oil were based on too few samples and these were unrepresentative of actual conditions. Some commenters expressed a reluctance to have EPA list used oil as a hazardous waste, but urged EPA, if used oil is to be listed, to list only those used oils that are disposed and not list used oils that are recycled.

A few commenters supported the proposal to list all used oils as hazardous waste. They stated that used oil has been historically mismanaged and presents a threat to human health and the environment. In addition, they referenced the "California experience" in support of listing. These commenters said that when California listed used oil as a hazardous waste, the resulting recycling program within the state increased the amount of used oil entering the used oil management system.

2. De Minimis Mixtures

EPA proposed exempting wipers, sorptive minerals, and oil filters that have been drained of free-flowing used oil from the definition of hazardous waste, if used oil were listed as a hazardous waste. EPA expressed its belief that many of these materials may not pose a threat to human health and the environment because of the very small quantities of used oil involved. The Agency also proposed the "one-drop" standard for determining whether or not free-flowing used oil is present in the mixtures.

The commenters were nearly unanimous in support of EPA's proposal to exclude wipers and sorptive minerals contaminated with small amounts of used oil from the proposed listing. A number of commenters requested EPA to expand the definition of sorptive minerals beyond the current definition of clay and diatomaceous earth to include synthetic adsorbents and other natural filter/absorbent media. A few commenters requested clarification as to the status of laundered clean wipers that do not contain free flowing used oil. A few commenters requested a clarification concerning recycling of used oil mixtures with high Btu value and instances where used oil cannot be separated from the mixture for burning a mixture as a used oil fuel.

3. Controlling Disposal of Used Oil

EPA believes that certain used oils may require disposal because they can not be recycled. In cases where the used oil is not recyclable and the disposal of the used oil is not controlled under the current subtitle C regulations (*e.g.*, because the used oil does not exhibit a hazardous waste characteristic), EPA wants to ensure that used oils are disposed of in an environmentally safe manner. EPA therefore requested comment on the appropriateness of developing guidelines for the disposal of used oil and the appropriateness of a total ban on the disposal of used oil.

Commenters supported EPA's proposal to develop specific guidelines for the disposal of nonhazardous oil under § 1008 of RCRA. Some commenters urged EPA not to impose a total ban on the disposal of nonhazardous oil. This is because some materials (*e.g.*, contaminated soil) can not be disposed elsewhere in an economically acceptable fashion. Some commenters supported a total ban on disposal of used oil mainly to ensure protection of the ground water and as a

method to promote recycling of all used oils.

4. DIY-Generated Used Oil

RCRA does not provide the authority to regulate household-generated waste prior to collection (*e.g.*, DIY-generated oil and filters), nor does it give EPA the authority to mandate collection programs for DIY-generated used oil. Over the past five years, EPA has developed public informational brochures to encourage DIY generators to recycle their used oil. EPA may develop more educational materials for the public and the regulated community on used oil recycling alternatives. EPA therefore requested comments on how to improve the recycling of DIY-generated used oil.

Many suggestions were received on ways EPA could encourage the acceptance and recycling of DIY-generated used oil. A majority of commenters, however, said that listing used oil as a hazardous waste would discourage recycling of DIY-generated used oil, primarily because many facilities indicated that they would no longer accept DIY-generated used oil because of the liability associated with collecting and handling hazardous waste. A state government agency stated that a primary reason service stations are not accepting DIY-generated used oil is the uncertainty over the past few years of whether EPA will list used oil as a hazardous waste and thus, require generators that have used oil on hand to pay for its disposal. Commenters indicated that the primary reason for the poor recycling rate of DIY-generated used oil is because of the lack of collection centers. Some major suggestions included the implementation of a curbside pickup program for DIY-generated used oil, requiring any entity selling motor oil to collect DIY-generated used oil, ensuring that used oil collection facilities be exempted from CERCLA liability requiring retailers to list nearby used oil collection centers, and establishment of a deposit-refund system.

5. Criteria for Recycling Presumption

EPA proposed to establish a presumption that all used oils, once collected, would be recycled and, therefore, would be subject to the proposed used oil recycling standards. However, EPA is aware of certain categories of used oils (*e.g.*, watery metalworking oils, oily bilge water) that may not be recyclable. Most used oils can be processed and treated to manufacture either burner fuel, lube oil base stock, to feedstock for refining. However, EPA gave consideration to providing an opportunity for used oil handlers to rebut the used oil recycling presumption and avoid compliance with the used oil recycling standards by documenting that their used oil is not recyclable in any manner. EPA requested comments on the suggested procedures for rebutting the recycling presumption and appropriate documentation.

The commenters were nearly unanimous in their support of the recycling presumption. However, the comments were mixed concerning the criteria for "recyclability" and the appropriate documentation. One commenter suggested that a one-time certification on the recyclability of a waste stream is adequate, assuming the facility's waste management plan does not change. Many of the commenters were supportive of the criteria EPA listed for determining recyclability, which included BTU content, water content, degree of emulsification, degree of viscosity, and the availability of economically and geographically acceptable recyclers. However, two commenters (refiners) stated that since none of the five criteria were examples of nonrecyclability and that all used oil can be recycled, whether used oil is actually recycled is strictly a matter of cost. One commenter questioned whether EPA had the authority to assume that all used oil was recyclable and, if not, to require certification and documentation.

Commenters were generally in agreement concerning the documentation requirements for the recycling presumption. There were only a few specific comments on the issue. One commenter suggested that a generator should not be allowed to determine recyclability but this should be the responsibility of a recycling facility. Another commenter suggested that documentation should be kept on-site and should not have to be sent to EPA.

6. Ban on Use as a Dust Suppressant

On November 29, 1985 (50 FR 49239), EPA proposed to ban the use of used oil as a dust suppressant (road oiling). The September 23, 1991, Supplemental Notice (56 FR 48041) stated that regardless of whether EPA lists used oils as a hazardous waste, EPA was still considering the ban of all used oils used for dust suppression. Specific comment was requested on how used oils could be used for dust suppression in an environmentally safe manner.

Most of the commenters supported the ban on using any used oil for dust suppression. Many of these commenters stated that used oil should not be used for road oiling given the potential adverse impact to water resources due to run-off. One commenter pointed out that surfactant additives in motor oil are generally anionic which prevents oil from bonding strongly to most negatively charged aggregate articles resulting in massive run-off. All of the state agencies commenting on this issue supported a ban.

Some commenters suggested that EPA should allow used oil to be used for dust suppression if it meets certain criteria such as not failing a characteristic test or the specification criteria for used oil fuel. Other commenters requested that nonhazardous used oil be allowed for road oiling. A few commenters urged the allowance of water contaminated with *de minimus amounts* of used oil to be used for dust suppression. On a related matter, some commenters wanted to know whether use of used oil for insect control or as a weed killer is allowed.

7. CERCLA Liability Issues

Section 114(c) of CERCLA contains the service station dealer's exemption from liability under the statute for used oil. To be eligible for the exemption, service stations are required to comply with the section 3014 of RCRA used oil management standards and accept DIY-generated used oil. EPA requested comment on how to ensure that small quantity generators could be eligible for this exclusion if they were conditionally excluded from most of the regulatory requirements similar to subtitle C.

The commenters were in agreement that the service station exclusion contained in section 114(c) of CERCLA should be implemented. Many commenters encouraged EPA to include facilities that collect DIY-generated used oil (*e.g.*, public facilities), regardless of whether they are service stations, to promote recycling of the DIY used oil segment. A commenter requested that EPA clarify that "quick oil change and lubrication facilities" are in the definition of "service station dealers" and that "used oil destined for recycling" should be included instead of just "recycled" used oil. One commenter requested that refiners and downstream users be included in the definition of service station to obtain the CERCLA liability exemption.

Many commenters expressed support for the elimination of generator category distinction (*i.e.*, small quantity generators versus large quantity generators). In addition to the reduction in confusion and handling requirements for used oil, these commenters noted that all generators could then benefit from the CERCLA liability exemption.

8. Storage

EPA proposed different requirements for storage for different segments of the used oil industry to respond to the potential risks associated with used oil handling. EPA requested comment on storage standards to address the potential hazards associated with used oil. EPA did not propose requirements for underground tanks used to store used oil, because the Agency believes that the current requirements for USTs in 40 CFR part 280 appear to be adequate.

Most commenters supported EPA's basic intent to establish minimum technical standards for the storage of used oil. A number of commenters supported the requirement that all generators should comply with minimal technical standards and that there should be no exclusion for small quantity generators; however, some opposed this approach and supported a distinction between generators based on the amount of used oil generated. The majority of commenters requested that the proposed requirement for daily inspections should be reduced to weekly, biweekly, or monthly. A number of commenters were against the proposed 50-foot buffer zone requirement primarily because it would be impossible for quick lube facilities to implement this requirement due to the limited size of their facility and it would be inappropriate because of the low flash point of motor oil. An alternative that was suggested was for facilities to comply with the NFPA's "Flammable and Combustible Liquids Code" for buffer zones. One commenter suggested that satellite accumulation areas that are exempt from the storage standards be allowed. One commenter pointed out that a definition and requirement for a continuously fed tank is necessary.

9. Secondary Containment for Tanks

EPA requested comment on its proposal to require Spill Prevention, Control and Countermeasure (SPCC)-recommended secondary containment or to require RCRA subtitle C secondary containment requirements for controlling releases and spills of used oil from aboveground storage tanks at used oil processing and re-refining facilities. The SPCC options include berms, dikes, or retaining walls along with an oil-impervious floor designed to contain used oil and avoid significant contamination of soil and nearby surface and ground water resources.

Most of the commenters agreed with EPA's proposal to require SPCC-recommended secondary containment but were not supportive of also requiring subtitle C secondary containment requirements for aboveground storage tanks. A few commenters noted that requiring compliance with subtitle C would not add a significant margin of safety compared to the cost of upgrading the tanks. Commenters argued that most of the aboveground storage tanks are already in compliance with SPCC and, with few exceptions, these requirements have been an acceptable vehicle for protecting human health and the environment. One commenter supported the measure to require owners/operators storing used oil in aboveground storage tanks to comply with both SPCC and subtitle C requirements. Their rationale was that such requirements address different management issues and are not unreasonably burdensome.

10. Financial Responsibility

In the 1985 proposed rule, used oil recycling facilities were to be subject to the subtitle C financial responsibility requirements (50 FR 49256). Many comments that were received on this proposal suggested that such requirements would have detrimental effects on the used oil recycling market. In the September 1991 Supplemental Notice, EPA requested comment on deferring the requirements.

The commenters were nearly evenly divided on EPA's proposal to defer the financial responsibility requirements for used oil recycling facilities. Those commenters that supported the deferral indicated that because recyclable used oil has economic value, there is an incentive to move as much oil as possible. These commenters also agreed with EPA's contention that requiring financial responsibility would impact the economic viability of used oil recyclers.

Those commenters that did not support EPA's proposal to defer the financial responsibility requirements questioned the practicality of requiring recyclers to comply with the closure and post-closure requirements while not requiring the financial mechanisms to ensure that these activities are done. A few commenters noted that there are 63 used oil recycling sites listed on the National Priorities List, which indicates that financial responsibility requirements are necessary. A state agency urged EPA to require some level of financial responsibility because used oil, when mismanaged, presents as much risk to human health and the environment as any other hazardous waste.

11. Permit-By-Rule

In the 1985 proposed rule, EPA used the authority under section 3014 of RCRA to propose permitting requirements for used oil recycling facilities (50 FR 49225, 49257). RCRA section 3014(d) provides that owners and operators of used oil recycling facilities are deemed to have a permit for their recycling activities and associated tank and container storage, provided they comply with the used oil management standards promulgated by EPA. Thus EPA proposed that owners/operators of used oil recycling facilities would be eligible for a permit-by-rule eligibility, including those undertaken by facilities that recycle or store used oil in surface impoundments and facilities that manage other hazardous waste in addition to used oil (co-management facilities).

Most of the comments pertaining to the permit-by-rule proposal were not supportive of EPA's proposal based on many concerns. A number of commenters opposed EPA's proposal that only those facilities that did not manage other hazardous wastes should be eligible. Their contention was that section 3014 of RCRA did not expressly state that co-management facilities were ineligible. A few commenters were against the permit-by-rule concept altogether and favored a site-by-site permitting approach. A few commenters requested EPA to allow permit-by-rules only for facilities that handled nonhazardous oil and require those facilities that handled hazardous oil to comply with subtitle C. Some commenters were in support of EPA's proposed permit-by-rule requirements.

IV. Definition of Used Oil

EPA's 1985 proposal to list used oil as a hazardous waste included the following proposed definition of used oil:

> "Used oil" means petroleum-derived or synthetic oil including, but not limited to, oil which is used as a: (i) lubricant (engine, turbine, or gear); (ii) hydraulic fluid (including transmission fluid); (iii) metalworking fluid (including cutting, grinding, machining, rolling, stamping, quenching, and coating oils); (iv) insulating fluid or coolant, and which is contaminated through use or subsequent management.

During the 1985 comment period, many commenters criticized the vagueness of the proposed definition. One issue commenters raised was that it was unclear from the definition what constitutes "contamination." The use of the phrase "but not limited to" also was challenged. Commenters contended that such a phrase could be interpreted to

include varieties of oil such as food grade oils within the definition of used oil. Commenters suggested that EPA specifically list in the definition the types of oils they intended to regulate.

Another point that commenters disputed about the definition of used oil was use of the term "or subsequent management." They pointed out that the statutory definition of used oil specifies contamination only "as a result of use," not via subsequent management. Used oils that become adulterated after use should be subject to management standards that discourage this practice. Commenters agreed that used oils contaminated with hazardous wastes should be subject to full subtitle C requirements.

Many commenters questioned the basis for including synthetic oils in the definition of used oil. The statutory definition of used oil does not explicitly include synthetic oils; therefore, commenters asserted that used synthetic oils should not be considered "used oils." Several comments were received regarding metalworking oils as well. Commenters requested that copper and aluminum wire drawing solutions be excluded from the definition of used oil. Copper drawing solution is an emulsion of 1 to 2 percent oil in water. Aluminum drawing solution is considered a neat oil (*i.e.*, 100 percent oil). However, one commenter stated that aluminum drawing solution is nonhazardous and meets the EPA used oil fuel specification test.

EPA carefully evaluated the comments referring to synthetic oils, including those comments where the commenter submitted data. EPA has concluded that synthetic oils that are not petroleum-based (*i.e.*, those produced from coal or oil shale), those that are petroleum-based but are water soluble (*e.g.*, concentrates of metalworking oils/fluids), or those that are polymer-type, are all used as lubricants similar to petroleum-based lubricants, oils, and laminating surface agents. Upon use, synthetic oils become contaminated with physical or chemical impurities in a manner similar to petroleum-based lubricants. This contamination during (or as a result of) use is what makes used oil toxic or hazardous. Upon collection, these used oils are not distinguishable from non-synthetic used oils, except in the case of segregated, water-based metalworking oils/fluids. All used oils, in general, are managed in similar manners (*e.g.*, burned for energy recovery, re-refined to produce lube oil feedstock, or reconstituted as recycled products). Therefore, EPA believes that all used oils, including used synthetic oils, should be regulated in a similar fashion and, hence, EPA has decided to include synthetic oils in the definition of used oil as discussed below. For the large part, the definition of used oil includes used lubricants of all kinds that are used for a purpose of lubrication and become contaminated as a result of such use.

Today, EPA is promulgating a regulatory definition for "used oil" at 40 CFR 260.10 as follows:

> Used oil means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

This regulatory definition of used oil is drawn from the statutory definition of used oil found at section 1004(36) of RCRA and is similar to the current definition of used oil found at 40 CFR 266.40(b). EPA believes that this definition covers the majority of oils used as lubricants, coolants (non-contact heat transfer fluids), emulsions, or for similar uses and are likely to get contaminated through use. Therefore, specific types of used oils are not identified in the definition.

The definition includes all used oils derived from crude oil, as well as used synthetic oils that are contaminated by physical (*e.g.*, high water content) or chemical (*e.g.*, lead, halogens, or other toxic or hazardous constituents) impurities as a result of such use. However, with today's rule, EPA is interpreting the definition of used oil contained in the statute to include used synthetic oils, including those derived from coal or shale or from a polymer based starting materials. The Agency explained its rationale for including synthetic oils in the definition of used oils in the preamble for the November 1985 proposed used oil listing (50 FR 49262). The Agency's position continues to be that synthetic oils should be included in the definition of used oil due to the fact that these oils are generally used for the same purposes as petroleum-derived oils, are usually mixed and managed in the same manner after use, and present the same level of hazard as petroleum-based oils. In addition, the Agency believes that Congress could not envision how prevalent synthetic oils would become when it passed the UORA in 1980. Congress surely would not have intended a result where large amounts of vehicle engine oils are not covered by RCRA section 3014.

The commenter-submitted data concerning synthetic oils suggest that properties of synthetic oils that are polymer based are akin to oils produced from crude base stock and can be used effectively as crude oil substitutes. When used, they become contaminated with physical or chemical impurities and are not readily distinguishable from used oils that are crude oil based.[4] Today's definition does not include oil-based products used as solvents refined from crude oil or manufactured from synthetic materials. The Agency has always viewed petroleum-based solvents as wastes separate and distinct from used oil. In the 1989 proposal for Land Disposal Restriction Standards, ignitable liquids encompass materials like solvents, paint thinners, contaminated oils, and various organic hydrocarbon. Some of these have been thought to contain organic constituents from the listed wastes F001–F005. (See 54 FR 48420, November 22, 1989.)

The definition of used oil promulgated today does not include used oil residues or sludges resulting from the storage, processing, or re-refining of used oils. EPA believes that the types and concentrations of hazardous constituents in used oil residues and sludges are different from those typically found in used oils, and therefore these residues and sludges warrant separate regulatory consideration. EPA is going to continue to study used oil residues and sludges, as well as all of the residuals from used oil re-refining activities. EPA may finalize the residual listings proposed in the 1991 Supplemental Notice or propose a listing determination for the specific used oil sludges and residuals in a future rulemaking. Residuals are covered under the existing RCRA regulations. Currently, these wastes are subject to the hazardous waste characteristics. If a residue, sludge, or residual resulting from used oil storage, processing, or re-refining exhibits one or more of the characteristics of hazardous waste, then it must be managed as a hazardous waste in accordance with all applicable Subtitle C requirements. However, as discussed later in this preamble, distillation bottoms derived from used oil re-refining are conditionally exempt from the used oil management standards promulgated today, as well as the Subtitle C hazardous waste regulations, when the distillation bottoms are used as ingredients in asphalt products. In the September 1991 Supplemental Notice, EPA proposed to list as a hazardous waste several residuals from used oil

[4] A letter from Mobil Corporation to EPA dated July 8, 1992. A report by Independent Lubricants Manufacturers Association, "Waste Minimization and Wastewater Treatment of Metalworking Fluids," 1990.

processing and re-refining operations. Distillation bottoms were among the residuals that EPA proposed to list. Following the 1991 Notice, EPA received data from several commenters indicating that distillation bottoms from the processing and re-refining of used oil do not fail the toxicity characteristic. EPA has no other recent data on the composition or toxicity of these residuals. In addition, commenters have indicated that the use of distillation bottoms as ingredients in asphalt materials is a very common practice. Furthermore, distillation bottoms, when used as asphalt extender materials, also may be regulated under the Toxic Substances Control Act, as applicable. EPA believes, based on the Toxicity Characteristic (TC) data provided by commenters, that the distillation bottoms from re-refining of used oil do not exhibit the characteristic of toxicity. Therefore, the Agency has deferred a listing decision for these residuals and has provided a conditional exemption from the hazardous waste regulations of parts 262 through 266, 268, 270, and 124 and the part 279 standards for certain residuals that are incorporated into asphalt (40 CFR 279.10(e)(4)).

V. Listing Determination for Recycled Used Oil

A. General

Section 3001 of RCRA provides the Agency with the general statutory authority under RCRA for identification and listing of hazardous wastes. In 1984, HSWA amended section 3014 of RCRA by specifically requiring EPA to exercise its hazardous waste identification and listing authorities and propose a listing determination for used automobile and truck crankcase oils and other used oils.

EPA's technical criteria for determining whether or not a solid waste should be listed as a hazardous waste are codified at 40 CFR 261.11. Section 261.11(a)(1) allows EPA to list a solid waste as a hazardous waste if the solid waste exhibits any of the characteristics of hazardous waste. Section 261.11(a)(3) directs that a waste shall be listed as hazardous if it contains any of the toxic constituents listed in appendix VIII and, after considering the following factors, the Administrator concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed. The factors to be considered in making this determination include toxicity, fate and transport, mobility and persistence, and the bioaccumulation potential of the constituents in the waste, as well as plausible mismanagement scenarios (40 CFR 261.11(a)(3)(vii)) and other Federal and state regulatory actions with respect to the waste (40 CFR 261.11(a)(3)(x)).

In making a listing determination for used oils destined for disposal, EPA paid considerable attention to the current Federal regulations governing the disposal of non-hazardous and hazardous wastes. EPA published a final listing determination for used oils destined for disposal on May 20, 1992 (57 FR 21524). EPA concluded that the existing EPA regulations, especially the toxicity characteristic, adequately regulate the disposal of used oils that exhibit a characteristic of hazardous waste. Other EPA programs (*e.g.*, the recently promulgated municipal solid waste landfill criteria, the stormwater requirements, and TSCA regulations), as well as other Federal and state regulations, adequately control the disposal of non-hazardous used oils that do not exhibit a characteristic of hazardous waste.

EPA has decided to use a similar regulatory approach for recycled used oils as the Agency used for used oils that are disposed. The Agency proposed in September 1991 that the listing of used oil as a hazardous waste may not be necessary if the Agency promulgates used oil management standards that are protective of human health and the environment. Commenters who responded to the September 1991 notice overwhelmingly supported this approach. EPA has decided to adopt this approach and consider the technical criteria for making a listing determination, given a universe of used oils that are managed in accordance with a protective set of management standards.

In making a listing determination for recycled used oils, EPA evaluated the technical criteria for listing a waste as hazardous, the fate and plausible mismanagement of used oils that are recycled, and the impacts of the management standards proposed in 1985 and 1991 and finalized today. EPA has determined that used oils that are recycled do not pose a substantial present or potential hazard to human health or the environment when the used oils are managed properly from the time they are generated until they are recycled. As discussed in the next section of this preamble, EPA believes that used oil that is recycled and handled in compliance with the used oil management standards promulgated today will not pose serious adverse risks to human health and the environment. Therefore, EPA is finalizing its decision not to list used oils that are recycled as hazardous waste. Integrally related to this "no listing" decision for recycled used oil, the Agency also is promulgating management standards for recycled used oils to assure protection of human health and the environment from potential damages due to the mismanagement of recycled used oils.

B. Summary of EPA's Listing Determination and Rationale for Recycled Used Oils

As discussed below, the Agency has determined that the major potential risks associated with the mismanagement of used oils during recycling can be adequately controlled through management standards promulgated under the authorities of RCRA section 3014. The used oil management standards promulgated today are designed to control the accumulation, storage, transportation, and general management of recycled used oils. The management standards promulgated today protect human health and the environment from potential mismanagement of recycled used oils without imposing undue regulatory and financial burdens upon the used oil recycling system. The goal of today's regulations is to ensure the recycling of all used oils in a safe and protective manner. These new Federal management standards address the major risks (discussed later) identified by the Agency, associated with management of used oil eliminating the need for the Agency to list used oils as hazardous waste per the listing criteria provided in § 261.11(a)(3).

Today's decision not to list recycled used oils is based on the adequacy of both existing Federal regulations and today's newly promulgated management standards to address the potential mismanagement of used oil, similar to the basis for the May 20, 1992 decision concerning used oil destined for disposal. Briefly, used oil mismanagement and related risks are controlled under other regulations and statutes; in particular, the 40 CFR part 280 underground storage tank (UST) regulations, the 40 CFR part 112 spill prevention, control and countermeasure (SPCC) program, the stormwater regulations, and the lead phase-down program. These regulations will be supplemented by the used oil management standards promulgated today for recycled used oils. As discussed in the preamble to the May 20, 1992 used oil regulation, the SPCC program requires facilities to have a contingency plan in place to ensure that

oil spills are prevented, controlled via containment measures, and responded to when oil spills occur and reach navigable waterways. The UST program similarly focuses on control and prevention of oil leaks from underground petroleum storage tanks including waste oil tanks. These two programs are clearly related to the management standards promulgated today and cover the used oil universe.

The management standards promulgated today specifically address the following major risks that EPA has identified with past practices in managing recycled used oil. These are:

1. *Improper storage.* EPA notes that in the past, used oil was both overaccumulated and handled carelessly, resulting in a number of release incidences, from used oil storage units. These releases have been documented at off-site processors and re-refiners.[5] Today's management standards have stringent secondary containment and spill cleanup provisions for used oil processors and re-refiners. Also, storage of used oil in unlined surface impoundments (unless only *de minimis* amounts of used oil are present) is banned outright.

2. *Road Oiling.* EPA has documented several cases of environmental degradation that were caused by oiling roads with adulterated used oil. Today's management standards ban the use of used oil for road oiling and dust suppression purposes. However, States that currently allow used oil to be used for road oiling, and/or those States that want to set standards to control the use of used oil as a road oiling agency, may petition EPA to allow road oiling in the individual States.

3. *Adulteration with hazardous waste.* In a number of documented instances used oil has been used either deliberately or inadvertently as a carrier for the illegal disposal of hazardous waste. The addition of hazardous waste, or "adulteration," results in a more toxic mixture that may be spilled, burned, or even dumped. Today's management standards address adulteration in four main ways:

- The "rebuttable presumption" provision of 40 CFR part 266, subpart E, which currently applies to used oil burned for energy recovery, has been expanded to cover all used oils, regardless of intended disposition;
- Used oil processing and re-refining facilities have to develop specific sampling and analytical plans to document that they do not accept hazardous waste/used oil mixtures;
- All used oil handlers must label their tanks and containers used to store used oil with the term "used oil," to assist employees in identifying which units are used exclusively for used oil storage and to avoid inadvertent mixing with other wastes; and
- The existing invoice system in 40 CFR part 266, subpart E for used oil fuels has been supplemented with a tracking system consisting of acceptance and delivery records. Tracking of used oil shipments applies to all used oil transporters and processing and re-refining facilities. The tracking system will assist in identifying accountability, should mixing be suspected.

Finally, EPA notes that two other areas of potential risk are not addressed by today's management standards, but these risks already have been reduced by in past agency actions. As noted above, the Agency is postponing listing determinations on used oil processing residuals. Although cases of environmental damages due to improper management of residuals have been documented, these cases involved residuals from old, out-of-date processes (*i.e.*, acid clay re-refining). Data received in response to the September 1991 Supplemental Notice indicate that residuals from newer processes do not exhibit the toxicity characteristic. Residuals that are destined for disposal are still subject to the hazardous waste characteristics, and in 1990, EPA promulgated the toxicity characteristic rule, which replaced the extraction procedure (EP) toxicity test. If used oil residuals, including distillation bottoms derived from used oil processing and re-refining, are recycled as used oil fuels, then the management of the residuals is subject to the management standards promulgated today. Distillation bottoms that are recycled as feedstocks in the production of asphalt materials are not subject to the management standards promulgated today. EPA will gather and assess information on newer technologies before reaching any further decisions on the regulatory status of residuals that are currently generated by used oil re-refiners.

EPA is aware of concerns raised over burning used oil as a fuel. The 1985 used oil fuel specification, however, was established to control the risks from burning used oil, thus it represents the Agency's best current judgment as to the level of control necessary to protect human health and the environment. Thus, the burning of used oil in compliance with the existing standards is not a "plausible mismanagement scenario" requiring the listing of recycled used oil as a hazardous waste. The concerns focus on the current lead specification of 100 ppm and whether this threshold provides adequate protection. RCRA restricts the burning of off-specification used oil for energy recovery to certain industrial facilities (e.g., industrial furnaces and utility burners) and space heaters. While facilities that burn off-specification used oil fuel are not required to control air emissions under RCRA, some of these facilities may be subject to Clean Air Act controls. The Agency plans to study these issues and, should regulatory controls be deemed necessary, EPA may take appropriate actions under RCRA or other statutory authority.

As discussed above, these rules address the major risks associated with used oil recycling including improper storage, road oiling, and adulteration with hazardous waste. These standards should prevent the kinds of mismanagement that has occurred in the past resulting in environmental damage. EPA has concluded that the management standards promulgated today in combination with other existing regulations provide adequate protection of human health and the environment and thus make it unnecessary to list used oil as a hazardous waste. EPA traditionally has based listing determinations on the risks posed by land-based management scenarios (*e.g.*, plausible land disposal mismanagement). Today's used oil management standards do address the technical criteria for listing of waste as hazardous under 40 CFR 261.11(a)(3).

EPA wishes to reemphasize that its decision not to list recycled used oil as a hazardous waste is based solely upon its evaluation of the technical listing criteria contained in 40 CFR 261.11(a)(3). In particular, EPA has not taken into account the potential stigma associated with classifying used oil as hazardous waste raised by commenters on the 1985 and 1991 proposals. Some consideration was given to the impacts of used oil management standards on used oil recycling in developing the standards, as required by section 3014(a) of RCRA. Once the standards were developed, however, EPA made today's listing determination by evaluating the resulting standards solely in terms of whether they would address the risks caused by plausible mismanagement of recycled used oil. EPA notes that the used oil standards address the same types of mismanagement, particularly spilling and improper land disposal, typically addressed by Subtitle C controls. In addition, the used oil management standards will be enforced under the same authorities (*i.e.*, section 3008 of RCRA) as are the hazardous waste regulations. For all of the above reasons, EPA determined that listing of recycled used oil as a hazardous waste is unnecessary.

[5] *Summary Descriptions of Sixty-Three "Used Oil" Superfund Sites*, Final Draft, U.S. EPA, May 1992.

VI. Final Management Standards for Recycled Used Oils

A. General Approach for Used Oil Management

On November 29, 1985 (50 FR 49212), EPA proposed a comprehensive set of management standards for generators, transporters and processing and re-refining facilities that handle and recycle used oil. The management standards proposed in 1985 were very similar to the management standards promulgated for handlers of RCRA hazardous wastes since the Agency also proposed to list used oils as hazardous wastes. EPA received substantial public comment on the 1985 proposed requirements. On September 23, 1991 (56 FR 48000), EPA published a Supplemental Notice of Proposed Rulemaking that discussed the Agency's recent data collection activities for the identification and listing of used oil and discussed several options for used oil management standards. The intent of the management standards alternatives identified and discussed in the 1991 Supplemental Notice was not to replace or withdraw the 1985 proposed standards but to set forth options to (a) clarify or modify certain 1985 proposed standards, (b) defer selected standards (*e.g.*, financial responsibility), and (c) add new requirements (*e.g.*, recordkeeping and reporting requirements for certain generators and transporters). The Agency requested and received a substantial number of comments on the specific approaches that the Agency was considering and that were discussed in the 1991 Supplemental Notice.[6]

After reviewing and analyzing comments in response to both the 1985 proposed rulemaking and the 1991 Supplemental Notice of Proposed Rulemaking, the Agency is adopting an approach for the management of used oils, described below, under which one set of management standards (with certain exemptions for used oil mixtures that contain de minimis quantities of used oil) will control the management of used oils that are recycled. The Agency's basis for setting these standards includes documented release and damage information, quantities of used oil managed by each segment of the used oil management system, the adequacy of current management practices, and the potential economic impacts that could be imposed on the regulated universe.

Based upon evidence provided by documented damages at sites on the National Priorities List (NPL) and by updating the site-specific information previously used to support alternative management standards discussed in the 1991 Supplemental Notice, EPA has concluded that storage practices at facilities that handled used oil have resulted in the vast majority of known instances of used oil mismanagement. EPA also confirmed this finding through a review of enforcement cases prepared by Regional enforcement officials to identify environmental damages that occurred at RCRA facilities managing used oil in solid waste management units. EPA has documented damage and release information from both NPL sites and RCRA-permitted facilities. Detailed descriptions of the damages at 63 NPL sites where used oil was managed are presented in "Summary Descriptions of Sixty-Three 'Used Oil' Superfund Sites." A summary of used oil-related damages at RCRA-permitted facilities where used oil was managed is presented in "Summary Descriptions of Used Oil-Related Damages at RCRA-Permitted Facilities." A copy of each of these documents is in the docket for today's rule.

The Agency has determined that it is necessary to develop management standards to address the major risks discussed earlier associated with management (and plausible mismanagement scenarios) of used oils within the used oil recycling system. Primarily, the management standards promulgated today focus heavily on used oil processors and re-refiners and include storage and release response requirements, tracking and recordkeeping requirements, and bans on certain practices that have caused problems (*i.e.*, road oiling and the storage of used oil in surface impoundments not regulated under subtitle C of RCRA). The management standards cover all sectors of the used oil universe and are codified in a new part, part 279, of title 40 of the CFR.

Generally, EPA is establishing (1) controls on the storage of used oil in aboveground tanks and containers to minimize potential releases from these units; (2) tracking and recordkeeping requirements for used oil transporters, processors and re-refiners to provide a level of confidence within the system that used oils destined for recycling are in fact recycled by authorized facilities; and (3) standards for the cleanup of releases to the environment during storage and transit and for the safe closure of storage units at processing and re-refining facilities to mitigate future releases and damages. The Agency believes this approach will address potential hazards to human health and the environment from the management (including plausible mismanagement scenarios), of all used oils by used oil handlers.

EPA believes that, irrespective of whether used oils exhibit a characteristic of hazardous waste, used oils can pose some threat to human health and the environment (*e.g.*, used oils can form a sheen on water and make it non-potable). Therefore, it is important that used oils are handled in a safe manner from the point of generation until recycling, reuse, or disposal.

As stated in the 1991 Supplemental Notice of Proposed Rulemaking and as supported by most of the public comments received by the Agency, the Agency has decided to implement used oil management standards using a two-phased approach. The proposed phased approach is designed first to develop basic management standards to address the potential risks associated with management (including plausible mismanagement) practices of used oil recycling industry. Used oil mismanagement scenarios include storage, collection/shipping, and processing or re-refining. At a later date, as the Agency monitors the effectiveness of regulatory approach and receives more information, the Agency may adopt additional measures as necessary to address other potential problems.

The management standards adopted today are designed to address the potential hazards associated with improper storage and handling of used oil by establishing minimal requirements applicable to used oil generators, transporters, used oil processors, and re-refiners, and off-specification used oil burners. These requirements are selected from both the 1985 proposed standards and the 1991 proposed alternative management standards, taking into account public comments, an assessment of economic impacts on the regulated community, an assessment of how the management standards will impact the market for recycled used oil, and an assessment of the effectiveness of today's regulations, combined with other requirements, in controlling the risks posed by the improper management of used oil.

Today's management standards cover all used oil handlers and requirements including detection and clean up of used oil releases associated with storage and transportation, controls on storage,

[6] EPA received more than 800 comments during the comment period for the September 1991 Supplemental Notice. EPA also received over 100 comments on the notice after the close of the comment period.

analytical requirements to assure that used oils are not mixed with hazardous wastes, recordkeeping requirements, and the existing 40 CFR part 266, subpart E standards for the rebuttable presumption of mixing. Today's requirements also include closure standards for used oil processing and re-refining facilities. These requirements also address hazards associated with road oiling and disposal practices. The Agency has previously evaluated disposal requirements for hazardous and non-hazardous used oils under RCRA to protect against potential hazards from land disposal of used oil in the context of the Agency's decision not to list used oil destined for disposal (57 FR 21524, May 20, 1992).

After today's rule is implemented, EPA intends to evaluate the protective nature of this initial set of requirements and the effects these standards have had on the used oil recycling market, prior to developing additional standards or developing non-regulatory incentive programs to promote and increase used oil recycling. After such an evaluation, EPA may impose additional management standards at a later date. EPA will weigh the increase in potential environmental benefits against economic impacts prior to developing and imposing additional RCRA requirements, as required by RCRA section 3014.

As part of a comprehensive approach to addressing the management of used oil, EPA encourages the recycling of DIY-generated used oils (*e.g.*, household-generated used oils). Currently, DIY-generated used oils (approximately 193 million gallons annually) are not widely recycled. In fact, DIY-generated used oils are often improperly disposed. The Agency does believe, however, that since 1985, the recycling rate for DIY-generated used oils has been increasing as a result of public and private sector efforts.[7] EPA discussed several non-regulatory approaches (*i.e.*, economic incentives) to encourage DIY used oil recycling in the 1991 Supplemental Notice. EPA received a significant number of comments on these approaches (summarized in Section II of this preamble). The comments generally indicated that EPA should not go forward with the development of economic incentive programs at this time, but allow private sector programs and state-initiated programs to address the issue of DIY used oil collection. Since the 1991 Supplemental Notice was published, EPA has initiated a study of non-regulatory approaches for promoting DIY used oil collection. If the results indicate that incentives can promote recycling, then the Agency may address the establishment or use of incentives for encouraging the recycling of DIY-generated used oils later.

The management standards promulgated today contain basic, good housekeeping standards for the management of used oil. EPA considered an alternative approach in which no management standards would be issued until the Agency had developed a comprehensive, risk-based management scheme for used oil, which would address DIY-generated oil, used oil fuels burned by industrial burners, used oil transportation, and other used oil recycling and re-refining activities. Although this type of approach may have the advantage of providing time for EPA to collect more information on used oil management practices and avoiding piecemeal regulation of the industry, factors in favor of the phased approach include providing immediate protection to human health and the environment by addressing the primary sources of hazards identified by EPA including, improper storage, road oiling, and adulteration with hazardous waste. As stated above, the 1991 proposed two-phased approach provides the opportunity for changing regulatory provisions (if necessary) in Phase II, based on feedback from the implementation of Phase I. EPA believes that the approach adopted today will allow for adjustments as problems of over- or under-regulation are identified in the future.

B. Recycling Presumption

Various authorities are available to the Agency to control the management of used oils. RCRA section 3014 provides EPA with the authority to regulate generators, transporters, processing and re-refining facilities, and burners that handle recycled used oil or used oils that are to be recycled, regardless of whether or not the used oils are identified as hazardous waste. Section 3014 of RCRA does not, however, provide the Agency with regulatory authority over used oils that are not recycled. As stated in the May 20, 1992 rulemaking, the Agency believes that other RCRA authorities and other EPA and non-EPA regulations adequately control the management of used oils that are not recycled.

In the 1991 Supplemental Notice, EPA proposed a presumption of recyclability for all used oils. The presumption was based on industry data which suggested that once used oil enters the recycling system the majority of the used oil is recycled by burning for energy recovery or some other manner, such as refining. Under the proposed presumption, the Agency would have presumed that all used oils would be recycled, unless a used oil handler documented that the used oil cannot be recycled. In the 1991 notice, EPA also proposed several criteria used oil handlers could use to rebut the recycling presumption. The comments that EPA received in response to the recycling presumption were very supportive. Commenters indicated that the recycling presumption would ensure that used oils remained in the used oil recycling system. However, many commenters also indicated that the criteria that the Agency proposed for rebutting the presumption are not necessary, since they argued that all used oils can be recycled and the selection of a recycling method depends on the physical characteristics of the used oil (*e.g.*, water content, level of contamination) and the corresponding cost of recycling the used oil.

After considering the public comments supporting the recycling presumption, and the difficulties associated with promulgating and enforcing the proposed "recyclability criteria," the Agency has decided that specific criteria to rebut the presumption are not necessary. The Agency agrees with the commenters that the physical characteristic of the used oil and the used oil recycling market will dictate the conditions for recycling of used oil. However, the Agency has retained the recycling presumption because the presumption simplifies the used oil management system by ensuring that generators and others may comply with one set of standards, the part 279 standards promulgated today, regardless of whether the used oil exhibits a hazardous characteristic and regardless of whether the used oil will ultimately be recycled or disposed. In other words, the generator (or any other person who handles the oil prior to the person who decides to dispose of the oil) need not decide whether the used oil eventually will be recycled or disposed and thus need not tailor its management of the oil based upon that decision (and, if destined for disposal, whether the used oil is hazardous). Rather, the part 279 standards apply to all used oils until a person disposes of the used oil, or sends it for disposal.

The recycling presumption will not apply once the generator or other person disposes or sends the used oil for

[7] A survey conducted by the Convenient Automotive Services Institute, which was undertaken earlier this year, indicates that half the states have private sector-operated DIY used oil collection programs. Also, more than 30% of the states have public sector-operated DIY used oil collection programs.

disposal. Today's rule does not impose any recordkeeping requirements on such persons to demonstrate that the oil is destined for disposal. Rather, they must continue to comply with existing requirements for used oil disposal as listed in part 279, subpart I. The used oil disposal must be done in compliance with all applicable regulations (*i.e.*, the generator must determine whether the used oil exhibits any characteristic and, if so, must manage it as a hazardous waste). If used oil is recycled, however, no characteristic determination is required, but all parties handling the used oil must comply with the part 279 management standards.

For used oil processing and re-refining residuals, a hazardous waste determination will be necessary when the residuals are managed in a manner other than recycling for energy recovery or when re-refining distillation bottoms are used as a feed material for asphalt products (see discussion in Section IV of this preamble).

C. Rebuttable Presumption of Mixing for Used Oil

The rebuttable presumption currently codified at 40 CFR 266.40(c) provides that used oil containing more than 1,000 ppm of total halogens is presumed to be mixed with chlorinated hazardous waste listed in 40 CFR part 261, subpart D. Persons may rebut the presumption by demonstrating that the used oil has not been mixed with hazardous waste. EPA does not presume mixing has occurred if the used oil does not contain significant concentrations of chlorinated hazardous constituents listed in appendix VIII of part 261.

In 1985, EPA promulgated the used oil fuel specification. EPA set the specification limit for total halogens at 4,000 ppm. EPA set this specification limit for total halogens based upon emission standards modelling results. EPA also promulgated the rebuttable presumption of mixing in 1985. The rebuttable presumption limit for halogen content was set at 1,000 ppm, based upon probable mixing scenarios. The Agency believes (due to enforcement experience) that used oils exhibiting a total halogen level greater than 1,000 ppm have most likely been mixed with chlorinated hazardous wastes.

The Agency wants to discourage all mixing of used oils and hazardous wastes. However, EPA understands that some used oils (e.g., metalworking oils with chlorinated additives) may exceed the 1,000 ppm total halogen limit without having been mixed with hazardous waste. In these cases, the generator can rebut the presumption of mixing by documenting the source of the halogens and the used oil is subject to the part 279 management standards and is not subject to the subtitle C management system. However, even if the presumption of mixing is rebutted, if the total halogen level in the used oil exceeds 4,000 ppm, the used oil will not meet the used oil specification limit for total halogens. Therefore, if the used oil is to be burned for energy recovery, and the used oil will have to undergo further processing to meet the used oil fuel specification (to lower the total halogen level) or the used oil must be burned as off-specification used oil fuel (in which case the used oil fuel handlers must be in compliance with the requirements of part 279, subpart G). In cases where the used oil generator cannot rebut the presumption of mixing, the used oil generator must manage the mixture of used oil and hazardous waste as a hazardous waste (in compliance with all applicable Subtitle C management requirements).

In the 1991 Supplemental Notice, EPA proposed to apply the rebuttable presumption for used oil fuels to all used oils. Commenters favored extending the applicability of the rebuttable presumption for used oil fuels to all used oils that are recycled in any manner. EPA has decided to expand the presumption to cover all used oils (with two exceptions, discussed below) and has amended 40 CFR 261.3 to make the provision applicable to all used oils. Under this presumption, used oils containing more than 1000 ppm total halogens are presumed to have been mixed with a halogenated hazardous waste and therefore must be managed as hazardous waste. Used oil handlers may rebut this presumption by demonstrating that the used oil does not contain hazardous waste. EPA is recommending the use of SW–846 method 8010 in rebutting the presumption of mixing.

In today's rule, EPA is removing the current requirements of 40 CFR part 266, subpart E and recodifying these requirements in the new part 279, as explained later in this preamble. In the case of the rebuttable presumption, EPA is reinstating the rebuttable presumption as part of the definition of hazardous waste at 40 CFR 261.3. The Agency is amending the definition of hazardous waste in this manner to clarify that the rebuttable presumption will now apply to all used oils and that all used oils that contain greater than 1,000 ppm halogens must be managed as a hazardous waste, unless the presumption can be rebutted.

EPA solicited comments on the possible elimination of a distinction between a 1,000 ppm halogen limit for rebuttable presumption of mixing and the 4,000 ppm level for total halogens in specification fuel. EPA received favorable comments from the public. EPA, however, has decided not to address this issue in today's rulemaking. The management standards established today cover basic management practices and establish 1,000 ppm level for the rebuttable presumption of mixing for all used oils. The 4,000 ppm total halogen limit for specification fuel remains unchanged for now.

Today, EPA is amending the rebuttable presumption of mixing to conditionally exempt two types of used oils from the requirement to document the rebuttal. EPA is providing a conditional exemption for both used metalworking oils containing chlorinated paraffins and used compressor oils containing CFCs.

1. Metalworking oils

EPA is providing a conditional exemption from the rebuttable presumption of mixing for used metalworking oils/fluids containing chlorinated paraffins, on the condition that these oils/fluids are processed through a tolling agreement to reclaim the metalworking oils/fluids. Many metalworking oils/fluids contain greater than 1,000 ppm total halogens, not because they are mixed with chlorinated hazardous wastes, but due to the presence of chlorinated paraffins in the oils/fluids. Today's amendment to the rebuttable presumption is partially a clarification, because used metalworking oils that are not mixed with hazardous waste (but do contain greater than 1,000 ppm halogens) could have been the subject of a successful rebuttal. This exemption will relieve generators of such oils/fluids of the burden and responsibility of documenting the source of the halogens when the generator has entered into a tolling agreement to have metalworking oils/fluids recycled. Generators, as well as other handlers, of metalworking fluids/oils who have not entered into a tolling agreement to provide for the recycling of the oils/fluids remain subject to the rebuttable presumption and will have to continue to document that the oils/fluids are not mixed with chlorinated hazardous wastes. The Agency is providing and codifying this amendment for generators and processors/re-refiners with tolling agreements because the Agency believes that such private arrangements restrict the handling of the oils/fluids and provide for a mutual interest in preventing any potential contamination of the oils/fluids to assure that the oils/fluids can be recycled (*i.e.*, adding

solvents to metalworking oils would reduce the value of the used oil as a metalworking oil—adding solvents may not reduce the value of the used oil if it is used as a fuel, but it is possible that it may be deemed as a mixture of used oil and hazardous waste if significant quantities of F001 and F002-halogenated constituents are detected).

2. Compressor Oils From Refrigeration Units Containing CFCs

EPA also is amending the rebuttable presumption to exempt CFC-contaminated used oils generated and removed from refrigeration units and air conditioning equipment, on the condition that these used oils are not mixed with other wastes, that the used oils containing CFCs are subjected to CFC recycling and/or reclamation for further use, and that these used oils are not mixed with used oils from other sources. The remaining used oil must be recycled appropriately in compliance with today's standards. The presence of CFCs in compressor oils removed from refrigerant units will cause the use oils to exhibit a halogen level greater than 1,000 ppm, even after the majority of the CFCs are removed and/or recycled. This exemption, like the exemption provided for metalworking oils, will relieve generators of used compressor oils of the burden and responsibility of documenting the source of the halogens. Generators and other handlers of CFC-contaminated compressor oils must keep the used oils that are contaminated with CFCs separate from other used oils that are not exempt from the rebuttable presumption, since other used oils may be mixed with chlorinated hazardous wastes. It is important to note that although the rebuttable presumption does not apply to used compressor oils containing CFCs or used metalworking oils, these used oils remain subject to appropriate part 279 standards. For example, used oils must contain less than 4,000 ppm total halogens to be considered specification used oil fuels.

Used compressor oils containing residual levels of CFCs after the CFC recycling/reclamation and used metalworking oils are subject to the specification limits for used oil fuels if these oils are destined for burning. EPA wants to discourage the burning of used oils with significantly elevated levels of halogens in space heaters or non-industrial furnaces or boilers. Pending further study, the Agency may restrict the on-site burning of metalworking and CFC-contaminated used oils sometime in the future. All burning of used oil containing high levels of halogens must occur in compliance with the RCRA regulations established for the burning of hazardous waste or used oil as applicable.

D. Summary of New Part 279

As mentioned above, today's action promulgates management standards for recycled used oil to meet the legislative mandate of the Used Oil Recycling Act of 1980. These standards are a combination of the 1985-proposed management standards and the alternative management standards proposed in the 1991 Supplemental Notice. The detailed discussion concerning applicable requirements is provided under individual categories of used oil handlers; Tables VI.1 to VI.7 give specific regulatory citations for the individual management standards contained in today's rule.

1. Applicability

a. *General.* As indicated in the 1991 Supplemental Notice, the used oil management standards promulgated in today's rule will be codified in a new part 279 of Title 40 of the Code of Federal Regulations. The regulations in part 279 apply to all used oils, regardless of whether or not they exhibit a hazardous waste characteristic. The management standards promulgated today apply to household-generated and do-it-yourself (DIY)-generated used oils only when these used oils are collected and aggregated. Such used oils may be collected and aggregated at individual privately-owned or company-owned service stations with DIY oil collection programs, auto centers or other state or local government-approved, community-based used oil collection centers.

Today's requirements cover all used oil handlers and all types of used oils. Table VI.1 summarizes the general standards. EPA believes that all used oils, once generated, must be stored properly and must enter the used oil recycling system. In addition, as discussed below, EPA presumes that all used oils are recyclable either as a fuel or a feedstock.

TABLE VI.1.—USED OIL

[General standards]

Requirement	New or existing	Regulatory citation
Recycling presumption	New	§ 279.10(a).
Mixtures of used oil with hazardous waste	Existing	§ 279.10(b).
Rebuttable presumption for used oil	Existing	§ 279.10(b)(1)(ii) and § 261.3(a)(2)(v).
Exceptions from rebuttable presumption for CFC and metalworking oils.	New	§ 279.10(b)(1)(ii) (A) and (B) and § 261.3(a)(2)(v) (A) and (B).
Mixtures of used oil with non-hazardous waste	Existing	§ 279.10(c).
Mixtures of used oil with products	New	§ 279.10(d).
Materials derived from used oil	New	§ 279.10(e).
Conditional exemption—wastewater	New	§ 279.10(f).
Used oil introduced into crude oil or natural gas pipelines	New	§ 279.10(g).
Used oil on vessels	New	§ 279.10(e)(3), § 279.10(h), and § 279.20(a)(2).
PCB contaminated used oils	New	§ 279.10(i).
Used oil specification	Existing	§ 279.11.
Surface impoundment/waste pile prohibition except for units operated under Part 264/265 requirements.	New	§ 279.12(a).
Prohibition on use as a dust suppressant	New	§ 279.12(b).
Prohibition on burning in other than certain units	Existing	279.12(c).

b. *Recycling presumption.* The management standards in part 279 apply to all used oils that can be recycled. EPA presumes that all used oils are recyclable and, therefore, all used oils must be managed in accordance with the management standards promulgated today. In the event a used oil handler disposes used oil on site or sends for disposal, the handler must comply with the applicable regulations (*e.g.*, determine whether the used oil exhibits any characteristic of hazardous waste and if it does, must manage the used oil as a hazardous waste). This provision is

codified today as subpart I of part 279. See section VI. B. for additional discussion.

The commenters to the 1991 Supplemental Proposal overwhelmingly favored implementation of the recycling presumption. However, many commenters stated that the criteria provided for rebutting the recycling presumption (*e.g.*, water content, BTU value) would be difficult to comply with, and therefore EPA should not develop such criteria. In addition, commenters stated that all used oils are recyclable and the extent of recycling depends on the cost to generators. For example, if the used oil is actually a mixture of oil and water, then the cost of recycling the mixture would be higher than recycling used oil that is straight out of engines or from metalworking operations. Upon further evaluation of comments, the feasibility of applying these criteria for a rebuttal, and the analytical requirements accompanying the proposed criteria, the Agency decided against finalizing the specific criteria for rebutting the presumption of recycling. The Agency believes that recycling is a more viable alternative than disposing of used oil as a characteristic waste. Therefore, used oil handlers will react to market conditions, thus selecting recycling over disposal. The Agency therefore has decided to rely on the decision to dispose used oil as a *de facto* criterion for rebuttal of the recycling presumption promulgated today.

c. *Mixtures.* The following section discusses management of mixtures of used oil and used oil-contaminated wastes. Used oils mixed with other solid wastes or with other materials (*e.g.*, virgin fuel oil) are regulated as used oil under the part 279 standards.

i. Mixtures of used oil and hazardous waste. Used oils that are mixed with listed hazardous wastes are subject to regulation as hazardous waste under 40 CFR parts 262 through 266, 268, 270, and 124. Used oils that are mixed with characteristic hazardous wastes may be managed as used oils under part 279 if the resultant mixture does not exhibit a characteristic. In addition, used oils that exhibit a hazardous waste characteristic (*e.g.*, ignitability or toxicity) by their own nature and are not mixed with a hazardous waste may be handled in accordance with today's part 279 used oil management standards and are exempt from (i.e., not subject to) additional Subtitle C requirements, if they are recycled.[8]

Mixtures of used oil and hazardous wastes generated by conditionally exempt small quantity generators regulated under 40 CFR 261.5 are subject to regulation as used oil. The hazardous waste from a conditionally exempt generator when mixed with used oil generated by this entity, may cause the used oil to exceed the halogen limit under the rebuttable presumption of mixing. This mixing has been permissible since 1985 under 40 CFR 260.40(d)(2) when used oil mixed with hazardous waste generated by a small quantity hazardous waste generator is burned for energy recovery. The existing requirement is recodified at 40 CFR 279.10(b)(3) today.

ii. Mixtures of used oil and other solid wastes. EPA encourages the separation of used oils from used oil/solid waste mixtures and from used oil-contaminated materials prior to management of the mixture. Used oils separated from mixtures containing other solid wastes should be recycled in accordance with the standards promulgated today. Used oils that have been separated from mixtures with other materials or solid wastes are subject to the management standards of part 279. For example, used oils recovered from oil filters, industrial wipers and other absorbent materials, and used oils recovered from scrap metals are all subject to the part 279 used oil management standards when they are recycled. Commenters were in favor of requiring proper management of wipers and sorptive materials contaminated with used oil, as long as the used oil has been removed and no free-flowing oil remains associated with the solid waste mixture.

In the September 1991 Supplemental Notice, EPA proposed a one drop test for determining when there is no free-flowing used oil remaining in a mixture. The Agency has decided against using the one drop test, because EPA is unable to address the question of how to determine when one drop is formulated. Instead, the Agency decided to apply a free-flowing concept to mixtures of used oil and other solid wastes. The used oil from such mixtures, when subjected to mechanical pressure devices such as cloth wringers/squeezers or gravity draining, can easily be removed so that no free-flowing oil remains associated with the other solid waste(s). Therefore, EPA has decided to apply the concept of no free-flowing oil, rather than a one drop test. EPA encourages the handlers of used oil and other solid wastes to remove used oil to the extent possible such that there is no visible sign of free-flowing oil in the remaining solid waste. The storage and handling of the mixtures prior to the separation of the used oil must be in compliance with the management standards for recycled used oil promulgated today. If any used oil that is removed from a mixture cannot be recycled, the generator of the used oil must manage the used oil in accordance with the disposal requirements of part 279, subpart I. Materials from which used oils have been removed must be managed safely and in accordance with all applicable RCRA regulations upon removal of used oil.

iii. Mixture of ignitable solvents and used oil. In the 1991 Supplemental Notice, EPA requested comments on whether the Agency should allow burning of mixtures of used oil and characteristic waste (i.e., waste exhibiting characteristics of ignitability) such as mineral spirits as a used oil fuel. The commenters stated that the burning of such mixtures can be performed in compliance with the used oil fuel specification requirements. The commenters also pointed out that mineral spirits, petroleum distillates are used in place of halogenated solvents as cleaning agents, degreasing fluids or part-cleaning solvents in automotive and vehicle maintenance industry and metalworking operations. The mineral spirits, petroleum distillates are then mixed with used oil to eliminate the characteristic of ignitability and then sent off-site for recycling as a used oil fuel. Based on the available data, the Agency has concluded that the mixing to manage ignitable solvents appears to be acceptable, provided the characteristic of ignitability of the ignitable solvents is removed.

EPA believes that if the solvents are hazardous only because of ignitability, and are not listed in part 261, subpart D, and do not exhibit the toxicity characteristic, then mixing the solvents in with used oil should not affect the chemical constituents or other properties of used oil. The solvents in question (i.e., mineral spirits) are petroleum fractions, are typically used by the same businesses that generate used oil, and are managed in a manner similar to used oil, i.e., burning for energy recovery or distillation to recover the solvent. As such, efficient and sound management can include mixing with used oil by used oil generators, and management by used oil processors and re-refiners. If the mixture exhibits the characteristic of ignitability, however,

[8] The Agency is currently evaluating several options to change the hazardous waste identification program (see 57 FR 21450; May 20, 1992). Depending upon which option(s) the Agency promulgates for hazardous waste identification, the mixture rule at § 261.3 may be altered or abolished. Hence, the regulation of used oils that are mixed with hazardous wastes may change.

this can mean that the mixing has changed the nature of hazards involved in managing the used oil, and this mixture should remain subject to hazardous waste controls.

d. *Used oil fuels.* Since the final used oil burning and blending rule was published on November 29, 1985, used oils burned for energy recovery have been regulated under 40 CFR part 266, subpart E. Today's rule removes subpart E from part 266 and incorporates (with minor modifications) the existing management standards for used oil marketers and burners (including the used oil fuel specification) into part 279. Used oil burned for energy recovery is subject to regulation under subpart G of part 279, unless the used oil is mixed with hazardous waste. Mixtures of used oil and hazardous waste that are burned as fuel for energy recovery in an industrial boiler or furnace will continue to be subject to 40 CFR part 266, subpart H, the standards for hazardous waste burned in boilers and industrial furnaces.[9]

(Note: Used oils that are identified as hazardous wastes may be burned for energy recovery in compliance with part 279 instead of 40 CFR part 266, subpart H, provided the used oil fuel is hazardous solely because it exhibits a characteristic of hazardous waste by its own nature or was mixed with hazardous waste generated by a conditionally exempt small quantity generator regulated under 40 CFR 261.5.)

e. *SPCC Program.* Today's rule regulates the storage of used oils in aboveground tanks and containers. Used oils stored in underground storage tanks remain subject to the standards of 40 CFR part 280. Under section 311 of the Clean Water Act, EPA has promulgated regulations for the prevention of oil spills into navigable waterways. These rules are known as the Spill Prevention Control and Countermeasure (SPCC) regulations and are codified at 40 CFR part 112. The SPCC requirements apply to non-transportation-related facilities located in the proximity of navigable waters; they cover facilities with underground storage capacity over 42,000 gallons, aboveground storage capacity greater than 1,320 gallons, or single tank capacity of 660 gallons. The SPCC definition of oil is very broad and covers all petroleum and oil product-storing facilities handling waste oil, fuel oil and "oil refuse;" therefore, persons and facilities storing used oil may already be subject to the SPCC regulations. The used oil facilities covered under the SPCC regulations will continue to be subject to those requirements independent of the used oil storage requirements promulgated today for the used oil industry participants.

The SPCC regulations are designed to address prevention of oil spills and the associated contamination or threat of contamination of surface water. However, the regulations do not specifically address the mitigation of discharges that contaminate soil and/or ground water without posing a threat of contamination of surface waters. In addition, the National Oil and Hazardous Substances Contingency Plan (NCP) at 40 CFR part 300 requires removal of oil forming a sheen on surface water but does not require cleanup of oil-contaminated areas that do not pose a threat of contamination of surface waters. EPA believes that approximately 50 percent of the used oil generator universe, most of the used oil transporters and processors and re-refiners, and more than half of the off-specification used oil burners are likely to be covered under the SPCC program. EPA also believes that less than 10 percent of the used oil industry participants are excluded from the SPCC program because they are not located in the vicinity of navigable waterways.[10] When today's used oil management standards become effective, the aboveground used oil storage and processing tanks and containers located at used oil transfer facilities owned or operated by used oil collectors/transporters, used oil processing and re-refining facilities, and off-specification used oil burner sites will be subjected to the RCRA section 3014 requirements. These used oil handlers also will be subject to the applicable SPCC regulations in 40 CFR part 112.

f. *Storage in Underground Tanks.* Used oil handlers who store used oil in underground storage tanks (USTs)[11] must comply with the standards in 40 CFR part 280. The technical standards for USTs, including USTs that are used to store used oils, were promulgated after the 1985 proposed used oil management standards. The Agency stated in the preamble to the UST final rule (53 FR 37112) that used oil, when stored in underground tanks, presents risks similar to other petroleum products stored in USTs. As a result, EPA determined that owners and operators of used oil USTs must comply with the standards promulgated for petroleum USTs.

g. Conditional Exemptions

i. Distillation Bottoms from Re-refining of Used Oil. As proposed in 1985, EPA is promulgating an exemption from the part 279 standards for distillation bottoms derived from used oil re-refining processes on the condition that the distillation bottoms are used as ingredients in asphalt paving and roofing materials. Commenters have indicated that the use of distillation bottoms to make asphalt paving materials is a common practice. Commenter-submitted data also indicate that distillation bottoms from re-refining processes do not exhibit the toxicity characteristic, and the Agency has no data to refute this claim. Therefore, EPA sees no reason to prohibit or restrict the use of re-refining distillation bottoms in the production of asphalt materials and is therefore excluding used oil residuals used in this manner from the definition of hazardous waste.

ii. Inserting of used-oil in crude oil or natural gas pipelines. Several commenters, in response to the 1985 proposed management standards, requested that EPA exempt upstream crude oil operations from the used oil management standards. These commenters believed that the practice of returning used oil to the refinery through the crude oil pipeline affords a high level of protection to human health and the environment, and additional requirements are unnecessary. Some commenters suggested that natural gas processing plants who may introduce used oil in the natural gas process stream should be exempted as well.

In response to these comments, EPA agrees that once introduced to a pipeline at crude oil or natural gas processing facilities, the possibility of releases to the environment is not greater for used oil than for crude oil and, therefore, is providing an exemption from the management standards for used oils that are placed directly into a crude oil pipeline. Similar exemption is provided to the owners/operators of natural gas

[9] Used oil that is mixed with hazardous wastes and is incinerated (*i.e.*), burning does *not* include energy recovery) must be incinerated in units that are in compliance with subpart O of 49 CFR parts 264/265. Any used oil that is incinerated in units regulated under parts 264/265, subpart O, must be managed in accordance with all applicable part 279 requirements prior to its incineration.

[10] See the background document pertaining to how the costs and benefits of today's rule were derived for a further explanation of how many facilities are not subject to the SPCC requirements. The background document is available in the docket for today's rule.

[11] In 40 CFR 280.12, underground storage tank is defined as any one or combination of tanks that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is ten percent of more beneath the surface of the ground.

processing plants may choose to introduce used oil generated on site into a natural gas pipeline. The exemption applies to such used oils after the used oils are placed into the pipeline. Prior to being placed into a crude oil pipeline, the used oils are subject to all applicable used oil management standards promulgated today as part of part 279, including all used oil storage requirements, because at that point, the used oil could be released through leaks or spills, as could any other used oil.

iii. Used oil/diesel fuel mixtures. Some used oil generators blend the used oils they generate from the diesel-powered vehicles they own or operate with diesel fuel for use in these vehicles. As EPA explained in the 1985 proposed rule (50 FR 49220), this blending should result in fuel that is very low in toxic contaminants. EPA also explained in 1985 that mixing of used oils with diesel fuel is often recommended by diesel engine manufacturers. In addition, data available to EPA suggest that used diesel engine crankcase oils are quite low in contaminants as generated. Since diesel fuel is itself typically low in toxic metals, a dilution ratio that assures a high concentration of diesel fuel to used diesel crankcase oils would seem to ensure the resultant blended fuel will meet the used oil fuel specification. EPA also believes that such blending is not done on a very frequent basis and the resultant blended fuel is kept on site for use in the generator's own vehicles. Therefore, EPA is exempting this activity from the processing and re-refining facility standards of part 279 for generators who engage in this practice on-site and use the resultant fuel only in their own vehicles. Such generators are, however, still subject to the generator standards of subpart C of part 279, prior to mixing the used oils with diesel fuel, and the resulting fuel must be managed in accordance with the used oil fuel specification regulations.

iv. de minimis wastewater mixtures. As proposed in 1985, the Agency has decided to exempt wastewaters contaminated with *de minimis* quantities of used oil from the part 279 requirements. These wastewaters are covered under the Clean Water Act regulations. The majority of commenters supported such an exemption. EPA is today finalizing the definition for *de minimis* quantities of used oil that was proposed in 1985: "small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or when small amounts of oil are lost to the wastewater treatment system during washing or draining operations." As discussed above, used oils recovered from wastewaters, however, will be subjected to the part 279 used oil management standards and must be managed accordingly. In addition, if such wastewaters are discharged to a surface water, the wastewater must meet all applicable NPDES limits promulgated under section 402 of the Clean Water Act. Wastewaters discharged to POTWs must meet the applicable pretreatment standards established pursuant to section 307(b) of the Clean Water Act.

v. PCB-contaminated used oils. Used oils that are contaminated with PCBs and regulated under 40 CFR part 761 are not subject to the used oil management standards promulgated today as 40 CFR part 279. The Agency believes that the current requirements in part 761 for PCB-contaminated wastes adequately control the management and disposal of used oils containing PCBs.

vi. Used Oils sprayed onto coal. When used oils are sprayed onto coal to suppress dust during the transport of coal, the used oil/coal mixture destined for energy recovery is considered a used oil fuel and is regulated under part 279 subpart G. However, used oils that remain in containers (including railroad tank cars and trucks) after the removal of the coal must be managed in accordance with all applicable part 279 standards.

h. *CERCLA Liability Exemption and Its Applicability to Service Station Dealers.* Service Station Dealers (SSDs), as defined by section 101(37) of CERCLA, will become eligible for the exemption from CERCLA liability for recycled oil as a result of today's rule, provided that they meet the requirements of section 114(c) of CERCLA. The exemption is limited to generator liability under section 107(a)(3) of CERCLA and transporter liability under section 107(a)(4); it does not cover owner and operator liability under section 107(a)(1) and (2). The exemption applies to liability for injunctive relief under section 106(a) and for cost recovery under section 107. In order to qualify for the exemption, an SSD must meet the following requirement of sections 114(c) and 101(37): (1) The SSD must be in compliance with the used oil management standards that EPA is promulgating today, discussed in sections VI.D.2 and VI.D.3, respectively, of the preamble; (2) the used oil must not be mixed with any other hazardous substance; and (3) the SSD must accept "do-it-yourself" generated used oil for recycling. Further, the exemption applies only to "recycled oil" as defined in section 1004(37) of RCRA.

The used oil management standards, in particular, include corrective action requirements for used oil releases after the effective date of the rule (i.e., response to used oil releases). The SSD must comply with these and with other applicable requirements, i.e., the part 280 standards for underground storage tanks, and part 112 standards for aboveground containers and tanks, as appropriate. In addition, the SSD complying with the corrective action requirements for underground storage tanks used for used oil storage will become eligible for the exemption. The exemption is not available for the SSD's own facility.

SSDs becomes eligible to assert the exemption on the effective date of the used oil regulations under section 3014 of RCRA that include, among other provisions, a requirement to conduct corrective action to respond to any releases of recycled oil under subtitle C or subtitle I of such Act. (See CERCLA section 114(c)(4).)[12] Today's rules provide for corrective action by cross-referencing subtitle I for releases from underground tanks and the part 112 regulations for aboveground SPCC tanks. For containers and other aboveground tanks, today's rule establishes new requirements for responding to releases under RCRA, section 3014, a subtitle C authority. In non-authorized States, the rules become effective (insert date 6 months from publication). In authorized States, the rules will not become effective until the State adopts rules under its own authorities. Prior to State adoption, an SSD may be eligible for the exemption if it can demonstrate compliance with EPA's regulations. In both authorized and non-authorized states, after the rules take effect, EPA would generally not pursue an enforcement action against SSD for which the exemption potentially applies unless it has reason to believe that the SSD is not complying with the section 3014 regulations, or fails to meet any other conditions of CERCLA section 114(c) and 101(37). EPA will determine whether a CERCLA enforcement action is appropriate on a case-by-case basis. EPA's determination, of course, is not binding on other persons, including states, that might bring an action under CERCLA. In such cases, the SSD may have to show

[12] The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund) (Pub. L. 96-510), as amended by The Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499), December 1986, p. 71.

that it has complied with the used oil management standards and met the other conditions of section 114(c) and 101(37) through record or other means.

As mentioned above, EPA has determined today that SSDs must follow existing regulations promulgated under Subtitle I of RCRA to respond to releases of recycled oil from underground storage tanks (USTs). SSDs and other owners of underground tanks had to begin complying with these regulations in 1988. The exemption for SSDs, however, could not take effect until EPA determined that compliance with these regulations would satisfy section 114(c) of CERCLA. In authorized states, the states themselves must adopt regulations governing underground tanks. While EPA encourages the states to rely on the subtitle I rules, the states may adopt more stringent requirements. Hence, EPA believes that the standards for underground tanks do not "take effect" for the purpose of the section 114(c) exemption in an authorized state until that state adopts used oil management standards under its own authorities.

Finally, section 101(37)(C) of CERCLA provides that the President shall promulgate regulations further defining "service station dealer" pertaining to the "significant" percentage of gross revenues from motor vehicle fueling, servicing including lube and tune up, or repairing activities provided to the public on a commercial basis. The legislative history states, "To prevent the creation and use of 'service station dealerships' as a front for hazardous waste management firms or commercial generators of hazardous substances that want the benefit of this exemption from liability, a significant percentage of the business' gross revenue must be derived from the fueling, repairing, or servicing of motor vehicles. Business operations, such as large retail establishments or car and truck dealerships that have a legitimate, commercial automotive service component, are intended to be covered by this definition. However, a retail establishment that does not derive revenue from fueling, repairing, or servicing motor vehicles does not qualify under this definition. To the extent establishments that do not qualify under this definition produce large quantities of used oil, they are industrial generators and are to be treated like other generators."[13]

2. Standards for Used Oil Generators

a. *Applicability.* The standards for used oil generators have been promulgated as subpart C of part 279. Table VI.2 lists applicable requirements and provides regulatory citations. These standards apply to used oil generators as defined in subpart B of part 279. A used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulations. For example, generators include all persons and businesses who produce used oil through commercial or industrial operations and vehicle services, including government agencies, and/or persons and businesses who collect used oil from households and "do-it-yourself" oil changers. Household "do-it-yourselfer" used oil generators or private individuals who generate used oil through the maintenance of their personal vehicles are not subject to the used oil generators standards.

[13] H. Rep. No. 99-662, 99th Cong., 2nd Sess. (1986), at 226.

TABLE VI.2.—USED OIL

[Generator standards]

Requirement	New or existing	Regulatory citation
Used oil on vessels	New	§ 279.20(a)(2).
Mixtures of used oil and diesel fuel	New	§ 279.20(a)(3).
Farmers	New	§ 279.20(a)(4).
Generators who perform other management activities	New	§ 279.20(b).
Hazardous waste mixing	New	§ 279.21.
Type of storage units	New	§ 279.22(a).
Good condition above ground tanks and containers	New	§ 279.22(b).
Labelling of tanks and containers	New	§ 279.22(c).
Response to used oil releases from above ground storage units	New	§ 279.22(d).
On-site burning in space heaters	Existing	§ 279.23.
Off-site shipment	New	§ 279.24.
SPCC requirements, including spill prevention and control	Existing (applicable independently)	40 CFR part 112.
UST requirements, including corrective action and financial responsibility.	Existing (applicable independently)	40 CFR part 280.
Accumulation limit	NA	None.
Inspection requirements	NA	None.
Closure	NA	None.
Collection Centers:		
Do-it-yourselfer collection centers	New	§ 279.30.
Used oil collection centers	New	§ 279.31.
Used oil aggregation points	New	§ 279.32.

The Agency has decided to regulate all used oil generators under one set of minimum management standards. Today's rule does not exempt any class of generators based upon a generation rate. In the September 1991 Supplemental Notice, FPA proposed to eliminate the regulatory distinction between small quantity and large quantity used oil generators (the Agency had proposed such a distinction in the November 1985 proposed rulemaking). The majority of commenters who responded to the September 1991 Supplemental Notice on this issue supported the proposed elimination of the regulatory distinction for generators.

In the 1991 Supplemental Notice, while proposing to cover all used oil generators under the RCRA section 3014 management standards, EPA discussed the advantages of such an approach to the regulated community, regulating agencies, and do-it-yourself used oil generators. The major advantages that EPA envisions are as follows. Such an

approach minimizes complexity by placing all used oil generators under uniform regulatory requirements; it eliminates the need for measuring quantities of used oils collected and stored each month; it eliminates the concerns that generators could be bumped into a more stringent regulatory category if the collect DIY-generated used oils; and above all, it allows for a system whereby all used oil is collected, recycled, and managed in an environmentally sound manner, thus reducing hazards to human health and the environment. Another major advantage, as discussed earlier in section V.D.1.h., is that approximately 30,000 used oil generators who meet the CERCLA section 114(c) "service station" definition qualify for the liability exemption if they accept DIY-generated used oil and comply with the used oil management standards, including corrective action (*i.e.*, used oil spill response and clean up requirements).

EPA decided against providing a small quantity generator exemption for the following reasons:

- The generator standards established today are basic and minimal good housekeeping practices that include maintaining all tanks and containers in good condition, labeling tanks and containers, and cleaning up spills and releases of used oil. They are substantially less than those proposed in 1985 and 1991.
- Large generators who use tanks that exceed the capacity limits and other prerequisites established under the SPCC and UST programs are subject to the containment and corrective action requirements in those programs. These programs provide additional protection necessary at used oil generator sites appropriately beyond the basic standards contained in today's rule.
- The collection of DIY-generated used oil would be discouraged due to the inherent concern for generators of being bumped into a higher category (*e.g.*, if an exemption was set at 100 kg/mo, generators would be unwilling to accept DIY-generated used oils because of the concern that the additional quantities of used oil would require them to comply with the management standards).
- Generators may have to keep records of used oil generation activities to demonstrate that they qualify from an exemption. It is probable that some generators may dump used oil to show that they only generate a quantity of used oil that is less than the quantity limit for defining a small quantity used oil generator.
- An extensive education and outreach program would be necessary to explain the interface between the used oil generator exemption and the CERCLA liability exemption.
- Existing mismanagement practices at certain generator sites would continue, resulting in ongoing risks to human health and the environment.
- As discussed in Section X of this preamble, the costs of compliance are relatively small on a per facility basis, even though total costs to generators may be 39 to 66 percent of the total costs to the regulated community.

b. *Used oil generated on ships.* In the case of used oils generated by ships or vessels (as defined in 40 CFR 260.10), these used oils are not subject to the used oil management standards until the used oils are transported ashore. When used oils are removed from a ship or vessel and taken ashore, the owner or operator of the ship or vessel and the person or persons removing or accepting the used oil from the vessel are co-generators of the used oil and both parties are responsible for managing the used oil in accordance with the used oil generator standards in subpart C of part 279. The co-generators may decide which party will fulfill the requirements of subpart C. Bilge water that contains used oil but does not contain listed hazardous waste when brought ashore must be managed in compliance with the generator standards in today's rule prior to subjecting it to separation steps that use oil/water separators. Bilge water containing listed hazardous waste is subject to RCRA subtitle C regulations once brought ashore. EPA believes that large quantities of bilge water are not generally stored for an extended period but are processed soon after their arrival on the shore. After separation the used oil portion of the bilge water must be maintained in compliance with the used oil generator standards. The remaining wastewater separated from bilge water must be managed in accordance with the applicable RCRA regulations and any discharged is subject to applicable Clean Water Act regulations. (See §§ 279.10(e)(3) and 279.20(a)(2).)

c. *Management of Materials Contaminated with Used Oil.* As discussed above, used oil that is mixed with a hazardous waste must be managed as a hazardous waste in accordance with all applicable RCRA requirements. Persons who generate mixtures of used oil and other materials or solid wastes (*e.g.*, used oil filters, rags, sorptive minerals, sorbent materials, scrap metals) are subject to part 279. Used oil removed from mixtures must be managed in accordance with the requirements of part 279 and either sent off-site for recycling or reused on-site. If the used oil removed from the mixture cannot be recycled, the generator must comply with the requirements of subpart I of part 279 for disposal of the used oil. Mixture of used oil and solid waste (e.g., natural or synthetic sorbent materials) from which used oil can not be separated when burned for energy recovery is subject to used oil specification fuel requirements.

After separating used oils from other materials or solid wastes, the remaining material or solid waste must be managed in accordance with any and all applicable RCRA requirements. The generator must determine whether or not the materials that previously contained used oil exhibit a characteristic of hazardous waste (with the exception of non-terne-plated used oil filters; see 57 FR 21534), and if so, manage them in accordance with existing RCRA controls. If the material does not exhibit a hazardous characteristic (and is not mixed with a listed hazardous waste) then the material can be managed as a solid waste.

d. *On-Site Management of Used Oil.* As discussed above, generators who blend used oil with diesel fuel for use in their own vehicles need not manage the used oil/diesel fuel mixture in accordance with the generator requirements of part 279. EPA believes that used oil/diesel fuel mixtures should be stored properly to ensure against possible spills, fire, and explosion hazards. Prior to mixing with diesel fuel, these used oils are subject to the part 279 generator standards. Generators may use such a mixture in their own vehicles.

Used oil generators who dispose of used oil on-site must test the used oil or apply their knowledge to determine whether or not the used oil exhibits a hazardous waste characteristic. If the used oil exhibits a characteristic of hazardous waste, the used oil must be disposed in accordance with all applicable RCRA requirements. When disposing used oil that cannot be recycled, the generator must comply with subpart I of part 279, relating to proper management and disposal of used oils. Used oil generators processing used oil on site are subject to standards for used oil processors/re-refiners promulgated today.

e. *On-Site Storage.* Used oil generators are required to store used oil in tanks or containers and must maintain all tanks and containers in good operating condition. In maintaining all tanks and containers in good condition, generators must ensure that all tanks and containers are free of any visible spills or leaks, as well as structural damage or deterioration.

Generators storing used oil in aboveground tanks and containers must clearly label all tanks and containers with the term "used oil." Generators who store used oil in underground tanks must label all fill pipes with the words

"used oil." The labeling requirements are meant to assist generator employees in identifying all tanks and containers used to store used oil and to avoid unintentional mixing. In the 1985 proposed rule, EPA solicited comment on a requirement to label all used oil tanks and containers with the words "recycled oil." Commenters overwhelmingly responded that such a term would be confusing because tanks and containers are used to store used oil before it is recycled. Therefore, the majority of commenters favored labeling used oil storage units with the words "used oil."

Used oil generators who are covered under the Spill Prevention, Control, and Countermeasure (SPCC) program will continue to be subject to the requirements of 40 CFR part 112. Similarly, generators storing used oil in underground storage tanks (whether or not the used oil exhibits any characteristics of hazardous waste) must comply with the standards in 40 CFR part 280, which are independently applicable and enforceable. As discussed in the Supplemental Proposal, technical standards for underground storage tanks (USTs) have been promulgated since publication of the 1985 proposed rule. The Agency stated in the preamble to the UST final rule (53 FR 37112; September 23, 1988) that EPA believes that used oil, when stored in underground tanks, presents risks similar to other petroleum products stored in USTs. As a result, EPA determined that owners or operators of used oil USTs (including used oil generators) must comply with the tank upgrading, operation and maintenance, corrosion protection, corrective action, closure, and financial responsibility requirements promulgated under part 280 for other petroleum product USTs. The Agency believes that the Subtitle I standards are sufficient to protect human health and the environment from potential releases of used oil from USTs. In addition, commenters to the 1991 Supplemental Notice felt that subjecting underground storage of used oil to standards beyond those in part 280 was unnecessarily burdensome and duplicative.

Storage of used oil in lagoons, pits, or surface impoundments is prohibited, unless the generator is storing only wastewaters containing *de minimis* quantities of used oil, or unless the unit is in full compliance with 40 CFR part 264/265, subpart K. The Agency believes that such units do not provide adequate protection of human health and the environment against potential releases and damages. In fact, the Agency has documented numerous cases of environmental damage from the storage of used oil in these units (see Environmental Damage from Used Oil Mismanagement, Final Draft Report, U.S. EPA, August 30, 1991, which is available in the docket for today's rule).

f. *Response to Releases.* Whenever a release occurs to the environment from the aboveground storage tanks and containers, a used oil generator must respond in a timely manner by taking the following steps: (1) Stop the release, (2) contain the released used oil, (3) clean up and properly manage released used oil and materials used for cleaning up/containing the release, and (4) remove the tank or container from service, repair, or replace the tank or container before returning it to service.

This above requirement applies only when there is a release to the environment. Under this rule, this would not include releases within contained areas such as concrete floors or impervious containment areas, unless the releases go beyond the contained areas. EPA believes that used oil spills or leaks occurring at generator facilities in an area with a concrete floor inside a building (*e.g.*, in service bays, maintenance garages, metalworking and fabricating locations) are cleaned up upon discovery as a general operating practice using appropriate sorbent materials before the used oil reaches the environment. Such clean up operations prevent the potential contamination of unprotected soils in the vicinity of the storage and work areas. The facility owners or operators must make sure that adequate quantities of sorbent materials are available on site all the time and is used to contain spills or leaks occurring during the normal activities.

The response to release provision does not require clean up of past releases to the environment which occurred prior to the effective date of the used oil program within an authorized state in which a used oil facility is located. Releases of used oil from underground storage tanks are subject to the requirements of 40 CFR part 280, subpart F independently as applicable.

In addition to the provisions listed above for releases of used oil from aboveground tanks and containers, and in addition to the corrective action requirements for releases from USTs provided in 40 CFR part 280, subpart F, used oil generators are required, under CERCLA section 103, to report a release of hazardous substances to the environment when the release is equal to or in excess of the reportable quantity (RQ) for the particular substance. Used oils that are contaminated with CERCLA hazardous substances (*e.g.*, due to the presence of elevated levels of lead) contain CERCLA hazardous substances. Therefore, releases of such contaminants (*e.g.*, lead) into the environment in quantities greater than the reportable quantity must be reported to the National Response Center. The current RQs for contaminants are listed in 40 CFR 302.4. In addition, under 40 CFR part 110, any discharge of oil that violates applicable water quality standards or causes a film or sheen on a water surface must be reported to the National Response Center.

g. *Off-site transport.* Used oil generators are required to ensure that all shipments of used oil in quantities greater than 55 gallons are transported off-site only by transporters who have an EPA identification number. Used oil generators may transport, in their own vehicles, up to 55 gallons of used oil, that is either generated on-site or collected from DIY used oil generators, to a DIY used oil collection center, used oil collection center, or aggregation point (*e.g.*, one that is licensed or recognized by a state or municipal government to manage used oil or solid waste). A used oil generator is not required to obtain an EPA identification number for this off-site transportation activity. A generator may also self-transport up to 55 gallons of used oil, in the generators's own vehicle, to an aggregation point owned by the used oil generator without obtaining an EPA identification number. EPA selected 55 gallons as a cut off quantity because that is the size of one drum. Also, the Agency feels that any quantity of used oil less than 55 gallons cannot be economically collected and transported by a used oil transporter.

The DIY used oil collection centers, used oil collection centers, and aggregation points referred to above are recognized by EPA as separate and legitimate entities in the used oil management system. Definitions of these terms are provided in § 279.1 and all three types of facilities fall within the definition of used oil generator. A used oil collection center is any site or facility registered/licensed/permitted/recognized by a state/county/municipal government to collect used oil from regulated generators prior to its pickup by a used oil transporter with an identification number for offsite recycling. EPA believes that these facilities handle small quantities of used oil on an occasional basis and local government would monitor their operations and make sure that these

sites are operating per the local-government specified guidelines. Such used oil collection centers must use used oil transporters with EPA identification number when sending used oil for offsite recycling.

Used oil collection centers may accept used oils from DIY generators as well as regulated used oil generators (in quantities less than or equal to 55 gallons per shipment). EPA believes that used oil quantities of less than 55 gallons (*i.e.*, content less than a 55-gallon drum/container) are unlikely to be accepted by the used oil collectors/transporters for offsite shipment.

A used oil collection center accepting only do-it-yourself generated used oil for recycling also must comply with the generator standards of part 279, subpart C. These DIY collection centers may or may not be recognized by the State or county/local authorities to accept DIY oil. DIY collection centers are centers that are not authorized to accept used oil from regulated generators. They are generally operated by voluntary organizations or local authorities as convenient "drop off" places for consumers to bring in their crankcase oil for recycling or proper disposal, similar to other household generated hazardous waste (e.g., paint thinners, degreasing fluids, over cleaners, insect killers). These establishments may be temporary by nature (*e.g.*, parking lots, schools, government office buildings). DIY collection centers that are operated to encourage DIY recycling are not equipped to handle or collect large quantities of used oil brought in for a drop-off by non-DIY generators. These centers have few drums/containers to collect small quantities of used oil stored in a milk jug or oil can/bottle, that are brought in for recycling by individual households. An example of a DIY used oil collection center is a site run by a state or municipal program established to collect used oil from commercial and household generators, such as Project ROSE in Alabama. Unlike used oil transfer facilities, DIY collection centers handle small quantities of used oil generated by DIYers on an occasional basis and after collection send the DIY used oil for off-site management.

A used oil aggregation point is any site or facility where an individual generator aggregates and/or stores shipments of used oil generated at any of several generation sites owned by the same generator. Aggregation points also may accept DIY-generated used oil. The major distinction between collection centers and aggregation points is that aggregation points and the generation sites from which they collect used oil are under common ownership. EPA views aggregation points of used oil generators, DIY collection centers, and used oil collection centers as similar to on-site facilities of used oil generators and, therefore, is subjecting them to the generator standards in subpart C of part 279.

EPA believes that it is necessary to allow used oil generators to self-transport small quantities of used oil to off-site collection centers or aggregation points to encourage generators of small quantities of used oil, and generators who have several generation points, but generate very small quantities of used oil at one or a few of the generator's sites, to recycle their used oils. EPA believes that used oil aggregation points are convenient drop-off point for satellite generator sites operated under the common ownerships. Used oil management at these aggregation points must be in compliance with the used oil generators standards and used oil must be send for offsite recycling using a used oil transporter with an EPA identification number.

If generators of small quantities of used oil were required to offer these small quantities of used oil to a used oil transporter with an EPA ID number, the cost of employing the transporter may discourage the generator from recycling the used oil. In addition, some used oil transporters may only accept shipments of used oil above a certain quantity. Therefore, by providing this self-transporting provision, EPA believes that generators who generate small quantities of used oil in any one calendar month will be discouraged from storing used oil on-site for long periods of time, or from disposing of the used oil. In addition, EPA believes that the risk of spills from transporting such small amounts of used oil is relatively low, thus, specific tracking of such shipments is unnecessary to protect human health and the environment.

h. *Accumulation limit.* Although EPA proposed, both in 1985 and in 1991, to restrict the accumulation of used oils stored by used oil generators, today's rule does not contain an accumulation limit for such used oil storage. EPA has decided not to impose an accumulation limit on generator storage since some amount of used oil is almost always stored at generator sites. Also, since used oil is a marketable commodity, there is an incentive for generators to send used oil off-site for recycling rather than storing it on-site for prolonged periods. EPA believes that used oil is not stored at the generator sites for a prolonged period since long-term storage requires purchasing of additional storage units for increasing storage capacity. This may result in additional costs to businesses or it may require that they comply with other federal or state regulations or local ordinance requirements.

i. *Tracking requirements.* In the 1991 Supplemental Notice, EPA proposed three options for the tracking of used oil from generators to used oil recycling facilities (*e.g.*, processors, re-refiners, burners) to ensure that all shipments of used oil reached recyclers of used oil. Commenters favored the concept of tracking shipments of used oil. Since the 1991 Notice, EPA has re-evaluated the proposed tracking requirements and the public comments. EPA also considered the costs associated with the tracking options for generators and the associated paperwork burden. In addition, EPA re-evaluated the recordkeeping requirements for used oil generators and assessed the information maintained by generators in normal operating records. Based on these analyses, EPA has determined that information maintained by used oil transporters will provide sufficient records of used oil transport activities without burdening used oil generators with additional tracking requirements. Information collected when accepting used oil shipments, such as quantities and type of used oil collected, the name and location of used oil generators, and analytical data for the rebuttable presumption, would be maintained by the used oil collectors/transporters as part of the recordkeeping requirements finalized today. Using this information maintained by used oil transporters, the Agency can track a used oil generator, if needed. Therefore, the Agency has eliminated the proposed tracking requirements for used oil generators. EPA believes that used oil generators maintain used oil collection and shipment records as standard business information.

j. *Inspection requirements.* In the 1985 and 1991 proposals, EPA proposed daily inspection requirements for used oil generators to assure the discovery of used oil spills and releases at used oil generator facilities. Commenters opposed the proposed daily inspection requirements. Most of these commenters claimed that when generators are loading/transferring used oils, they check for leaks and spills and take appropriate action at that time to clean up the released oil and contaminated materials. Transferring operations do not occur daily at generator sites. SPCC inspection and clean up requirements will be applicable independently.

k. *Closure Requirements.* In the 1985 and 1991 proposals, EPA considered deferring closure requirements for used oil generators, based on the lack of risk data supporting the need for closure requirements at generator sites. Since 1991, while reviewing the available Superfund site information and RCRA enforcement case data, the Agency has not located any damage information specific to generator sites. This leads the Agency to believe that damages at used oil generator sites are not a substantial concern (*i.e.*, have not resulted in environmental damage of a significant magnitude that it has resulted in the site being identified as the NPL site). Therefore, the Agency believes that closure requirements for used oil generator sites are unnecessary at this time, hence EPA is deferring such requirements.

l. *Exemption for Small Farmers.* In response to comments expressing concern over the expansion of RCRA requirements to small farmers generating used oils from heavy farming equipment, machinery, and vehicles, EPA is providing an exemption from the generator standards for small farming operations that generate on an average 25 gallons or less of used oil per month in a calendar year. EPA is providing this exemption to these generators because EPA believes that most of these generators, especially family farms, are similar to households, whose solid waste management is unregulated under RCRA. Family-run and other small farms are similar to households in a number of ways: They tend to have about the same number of vehicles owned for personal use; they tend to service and maintain their family-owned vehicles and heavy farming equipment on-site; and, indeed, small farms typically have residences on-site which generate used oil and other exempt household wastes. Also, unlike small industrial generators who usually are located within close proximity to used oil collection centers or who can easily arrange for used oils to enter the used oil recycling system via a used oil transporter, many family farms and other small farming operations are not readily accessible to collection centers. They may be using used oil on site in space heaters for heating purposes during the winter months and hence, do not accumulate more than 25 gallons of oil per month on average which can be provided to used oil transporters for recycling. Therefore, EPA believes that small farms who generate on an average 25 gallons or less per month of used oil in a calendar year should be exempted from regulation, as are households.

EPA has set the generation limit for the small farmer exemption at, on an average, 25 gallons or less of used oil per month in a calendar year to exempt only small farms that may have special difficulties in locating a used oil recycling center or in otherwise recycling the used oils they generate. The 25 gallon cutoff is roughly equivalent to the more general SQG exemption for used oil generators the Agency had considered in the 1985 and 1991 proposals and the 100 kg/month exemption for the conditionally exempt small quantity generators of hazardous waste. EPA believes that small farms will have few pieces of equipment and thus generate only small amounts of used oil. Of the approximately two million farms in the U.S., over 99 percent would be exempt under this provision. Finally, since small farms pose similar problems for the used oil management system as DIY from households, EPA believes it may be more appropriate to consider non-regulatory alternatives to encourage the collection of used oils from small farms, rather than the management standards promulgated today.

EPA's intention in providing this exemption is not to exempt large farming operations or businesses from today's standards. EPA believes that large farming operations do not face the same difficulties in recycling the used oil they generate and these operations are better able to provide the used oils they generate to the used oil recycling system. The Agency is aware of current activities undertaken by brokers who are involved in collecting used oil generated by large farming operations and business.

EPA encourages small farmers, as well as household used oil generators, to recycle their used oil, and when available, to participate in community collection programs or used oil collection facilities by cooperatives, brokers, etc. As is the case with used oils collected from households, used oil that is collected from these farms at used oil collection centers and DIY-collection centers is subject to the part 279 standards when collected and accumulated at these collection centers.

Any use of used oil that can be construed as application to land (e.g. weed killing, spraying on plants) that is performed by exempt farming operations (or others) is discouraged since EPA is concerned with long term impacts of land application of used oil on the environment. Also, exempted farmers may be subject to state regulations that may limit such practices.

3. Standards for Used Oil Transporters

a. *Applicability.* A used oil collector/transporter is any person or business who collects used oil from more than one generator or transporter or a generator who transports shipments of more than 55 gallons of used oil and transports the used oil off-site to another party or establishment for recycling, disposal, or continued transport. Used oil generators who transport shipments of used oil in their own vehicles, in quantities of 55 gallons or less (*i.e.*, a drum/container holding this quantity) to used oil collection centers or aggregation points[14] are not within the definition of a used oil transporter. Household do-it-yourselfers who transport used oil to generators, collection centers, or aggregation points also are not included in the definition of a used oil transporter. Table VI.3 lists requirements for used oil transporters and provides the regulatory citations.

[14] Used oil collection centers and aggregation points are defined in Subpart A of Part 279.

TABLE VI.3.—USED OIL

[Transporter and transfer facility standards]

Requirement	New or existing	Regulatory citation
General requirements	New	§ 279.40(a) through (c).
Transporters who perform other management activities	New	§ 279.40(d).
Restriction on processing used oil	New	§ 279.41.
Notification and EPA identification number	Existing for transporters who are marketers; new for others	§ 279.42.
Used oil deliveries	New	§ 279.43(a).
DOT requirements	Existing (applicable independently)	§ 279.43(b).

TABLE VI.3.—USED OIL—Continued

[Transporter and transfer facility standards]

Requirement	New or existing	Regulatory citation
Used oil discharges	New	§ 279.43(c).
Rebuttable presumption for used oil	Existing for transporters managing used oil fuel; new for others	§ 279.44(a), (b), and (c).
Exceptions from rebuttable presumption for CFC and metal-working oils.	New	§ 279.44(c)(1) and (2).
Record retention for rebuttable presumption	New	§ 279.44(d).
Recordkeeping	New	§ 279.44(d).
Storage limit	New	§ 279.45(a).
Type of storage units	New	§ 279.45(b).
Good condition above ground tanks and containers	New	§ 279.45(c).
Secondary containment for containers and existing and new above ground tanks.	New	§ 279.45(d), (e) and (f).
Labelling of containers and tanks	New	§ 279.45(g).
Response to releases	New	§ 279.45(h).
Tracking—acceptance, deliveries, export, and recordkeeping	Existing for transporters who are marketers (invoices); new for others.	§ 279.46(a), (b), and (c).
Tracking—exports	New	§ 279.46(d).
Management of residues	New	§ 279.47.
SPCC requirements, including spill prevention and control	Existing (applicable independently)	40 CFR part 112.
UST requirements, including corrective action and financial responsibility.	Existing (applicable independently)	40 CFR part 280.
Inspections	None	None.
Closure	None	None.

Owners and operators of used oil transfer facilities are also defined as used oil transporters. A used oil transfer facility is any transportation-related facility where used oil shipments are held for more than 24 hours during the course of normal transport prior to final transport to another transfer facility(ies), a used oil processor/re-refiner, or a used oil burner. Transfer facilities include such areas as loading docks, parking areas, and tank and container storage facilities. All used oil transporters are required to comply with the standards promulgated in subpart E of part 279. In addition, used oil transporters who also handle other hazardous waste must be in compliance with all applicable RCRA subtitle C regulations for hazardous waste transporters.

Used oil transporters who process used oils (including blending used oils with virgin oils) are subject to the standards for used oil processing and re-refining facilities in subpart F of today's rule.

Any person who transports used oil in a vehicle previously used to transport hazardous waste must ensure that the vehicle meets the definition of an empty container per 40 CFR 261.7 prior to transporting used oil. If the transporter does not comply with § 261.7, the used oil shipment is considered to be a hazardous waste and must be managed accordingly. The definition of "empty" requires that all non-acutely hazardous wastes be removed using common industry practices and that no more than 0.3 percent of the waste by weight remain in containers greater than 110 gallons and no more than 3 percent by weight remain in containers with a capacity of less than or equal to 110 gallons.

Transporters who import used oil into the United States and transporters who export used oil to points outside of the United States are subject to the used oil transporter requirements of subpart E of part 279 from the time the used oil enters the United States until the time the used oil exits the borders of the United States.

b. *Restrictions.* Used oil transporters are prohibited from blending used oils with virgin oil to meet the specification levels for used oil fuels in § 279.11. If an owner or operator of a transfer facility conducts any used oil processing, including blending to market the used oil as a fuel, the owner/operator must comply with the requirements provided for used oil processors and re-refiners in part 279, subpart F. EPA clarifies here that blending different used oils together to consolidate shipments is allowed by used oil transporters. The only blending activity that transporters are prohibited from undertaking is the blending of used oils with virgin oils to meet the fuel specifications. EPA has determined that "incidental processing" (*e.g.*, settling) that may occur at transporter sites when used oil is in storage does not pose any risks similar to those associated with processing of used oil. EPA considers "incidental processing" at transporter facilities during shipment consolidation or transfer not to be equivalent to blending or processing of used oil to meet the specification requirements for used oil fuels. Consolidation for a purpose of collecting a shipment full of used oil to transfer to a used oil processor/re-refiner does not necessarily require any treatment. When a used oil transporter markets a consolidation of different loads of used oil as an on-specification used oil fuel to non-industrial boilers and furnaces, the transporter must comply with the 1985 marketer requirements (*e.g.*, claiming that it meets the specification levels for used oil burned for energy recovery) recodified in part 279 today. A transporter may market used oil as off-specification fuel upon consolidation of different loads of used oil without making any specification claims and must comply with the 1985-established requirements for marketers of off-specification used oil that are recodified in part 279 today.

c. *Notification Requirements.* Any used oil transporter who has not previously complied with the notification requirements of RCRA section 3010 must do so and obtain an EPA identification number. An EPA identification number can be obtained by submitting EPA Form 8700–12 to the appropriate EPA Regional Administrator or State Director. An EPA identification number also can be obtained by submitting a letter to the EPA Regional Administrator requesting an EPA identification number and containing the following information: Company name, name of the owner of the transporter company, mailing address, telephone number and address of the point of contact, type of transport activity (*e.g.*, transporter only, transfer facility, or transporter and transfer facility), location of transfer facilities, and the name and phone number of the contact

at each transfer facility. Upon receipt of a completed notification form, EPA will provide the transporter with a unique 12-digit identification number, which is required to transport used oil. Transporters who have previously notified the Agency of their hazardous waste activities (or notified EPA under the 40 CFR part 266, subpart E used oil fuel regulations) and received an EPA identification number need not renotify.

d. *Delivery of Used Oil Shipments.* A used oil transporter is required to ensure that a shipment of used oil reaches an "authorized" used oil processing or re-refining facility, a used oil burning facility, or another used oil transporter. Entities deemed to be authorized are used oil processing and re-refining facilities subject to part 279, subpart F; used oil burning facilities in compliance with part 279, subpart G; hazardous waste management facilities with a permit or interim status; part 258 disposal facilities; or another used oil transporter who has an EPA identification number.

A transporter who markets used oil fuels must comply with the used oil marketer requirements of 40 CFR part 279, subpart H. In the event a transporter undertakes this activity, the transporter must comply with the recordkeeping (invoicing) requirements of § 279.74.

e. *Shipping requirements.* Transporters and collectors are required by existing U.S. Department of Transportation regulations to meet certain standards if the used oil is a hazardous material, including all applicable packaging, labeling, and placarding requirements in 49 CFR parts 173, 178, and 179. In addition, under today's rule, used oil transporters and collectors must clean up any used oil discharge that occurs during transportation or take such action as may be required or approved by Federal, state, or local officials so that the used oil discharge no longer presents a hazard to human health or the environment. The Agency believes that these provisions are necessary to reduce the potential impacts of used oil that could be released into the environment.

f. *Used oil storage at transfer facilities.* A used oil transfer facility is defined in 40 CFR 279.1 as "any transportation related facility [15] including loading docks, parking areas, storage areas, and other similar areas where shipments of used oil are held during the normal course of transportation for a period longer than 24 hours but not exceeding 35 days." A transfer facility is regarded as a site for the temporary storage of used oil that is picked up from one or more original generators and is on its way (1) to a processing or re-refining facility for further processing to produce used oil fuel, non-fuel recycled oil products, or lube oil feedstock; (2) to be reintroduced into refinery operations; or (3) to be burned as a used oil fuel. Storage of used oil at a transfer facility for a period exceeding 35 days will cause the transfer facility to become subject to the standards for used oil processors and re-refiners in subpart F of part 279.

The requirements established today cover all used oil transfer facilities owned/operated by used oil transporters regardless of their location and regardless of the size of any single tank at the facility or the total storage capacity of the facility. The SPCC (40 CFR part 112) and UST (40 CFR part 280) requirements are independently applicable to such facilities.

EPA believes that some regulatory controls are necessary to ensure proper management of used oils at used oil transfer facilities. Improper management at these facilities could allow for the release of used oil to the environment, cause spills during transfer and loading/unloading operations, or result in the inadvertent adulteration of used oil with hazardous waste while in storage or in transit. To prevent such mishaps, EPA is adopting "good housekeeping" standards for transfer facilities to ensure that units (containers and tanks) used to accumulate and/or store used oil are kept in good condition and to minimize potential releases of used oil to the environment.

Storage of used oil at a transfer facility must occur only in containers and aboveground or underground tanks. EPA believes that storage of used oil in units other than containers or tanks (*e.g.*, surface impoundments or lagoons) at transfer facilities does not occur since transfer facilities are typically temporary storage areas where used oil is stored for periods of very short duration. Furthermore, as discussed elsewhere in today's notice, EPA believes that storage of used oil in surface impoundment is generally a poor practice. Thus, EPA believes it is appropriate not to allow it at transfer facilities. EPA believes that transfer facilities are not likely to hold used oil in surface impoundments but in case, such use occurs only surface impoundments that are in compliance with parts 264/265 requirements can be used for used oil storage. Today's rule prohibits the use of an unlined surface impoundment for used oil storage.

All aboveground tanks [16] and containers at transfer facilities must be kept in good condition (*i.e.*, no visible signs of deterioration or leaks) and containers must be in compliance with all applicable DOT regulations. Aboveground tanks and containers and all fill pipes for underground used oil storage tanks must be clearly labeled with the words "used oil" to minimize accidental mixing. In addition, the storage areas around aboveground tanks and under the storage containers must be equipped with oil-impervious floors and secondary containment structures (dikes and berms or retaining walls) capable of containing all potential spills and releases of used oil until the discovery and cleanup of spills and releases.[17] The floor under existing storage tanks must cover the entire area within the dike, berm or retaining wall except areas where portions of existing tanks meet the ground. EPA has determined that it is not necessary to require retrofitting of the floors of the existing tanks that are in good condition; it is not necessary to remove tanks temporarily to install an impervious floor directly beneath an aboveground tank that is in good condition. Any releases from the walls of existing tanks will be captured within the containment area and will be removed, while releases to the area outside of the containment area must be cleaned as required by today's release response requirements. EPA believes that used oil releases from tank overfills, spills, and loading/unloading activities are more likely than from the bottom of a tank or due to the loss of structural integrity of a tank.

However, the floor surrounding the area where the tank meets the ground must be impervious to oil. When installing new aboveground tanks, replacing damaged or deteriorated tanks, or reinstalling unfit tanks after restoring the structural integrity, an impervious floor under the aboveground tanks must be installed. This requirement is applicable to the aboveground tanks that are existing when the states adopt the part 279 used oil management standards and when the state rule containing the Federal used oil management standards takes effect. The

[15] For facilities subject to the SPCC regulation, the term "transportation-related" is defined in Appendix I of 40 CFR part 112.

[16] Aboveground tank is defined in § 279.1 as a tank used to store or process used oil that is not an underground tank as defined in part 280.

[17] For further discussion of the basis for the secondary containment requirement and the materials suitable for constructing impervious floors and dikes, berms, or retaining walls, see section VI.E.5. of today's preamble.

impervious floor under new storage tanks must cover the entire area within the containment structure. The effective date is the same as that discussed for existing tanks.

In the 1985 proposed rule and in the 1991 Supplemental Notice, EPA proposed secondary containment requirements for used oil storage tanks that are similar to the secondary containment provisions of 40 CFR part 264, subpart J. The Agency received a substantial number of public comments that disagreed with EPA's proposed secondary containment requirements. Most commenters disagreed with the proposed secondary containment provisions on the basis that the cost of full secondary containment for tanks and containers would be prohibitive for most used oil generators and transporters. The secondary containment requirements promulgated today for aboveground tanks and containers are substantially less burdensome, both technically and financially. Although these requirements will still impose some costs upon used oil transporters, the Agency believes that some level of secondary containment is necessary at transfer facilities to protect human health and the environment from potential used oil spills and releases. In fact, as documented by the Agency in the background documents supporting this final rule, past storage practices at used oil management facilities, including transfer facilities, have resulted in releases of used oil to the environment and, in some cases, substantial damages to human health and the environment.[18] EPA believes that the secondary containment requirements established today adequately protect against used oil releases to ground water and the existing SPCC requirements provide protection against spills reaching navigable waters. EPA has determined that secondary containment requirements similar to those in 40 CFR parts 264/265, subpart J are not necessary since the requirements promulgated today will effectively contain any spilled or released used oil within the containment structures. Also, the requirement that the entire containment structure be made of a material impervious to used oil will prevent the migration of used oil to soils, surface waters, and ground water.

Although the secondary containment requirements promulgated today are somewhat less burdensome than those required under 40 CFR parts 264/265, subpart J, any used oil transfer facility that is currently in compliance with the subpart J requirements (*e.g.*, the facility has double-walled tanks with double-walled or otherwise contained pipes) will be deemed in compliance with the secondary containment requirements promulgated today. EPA does want to clarify that all aboveground tanks or containers must be within a secondary containment structure that is impervious to used oil and capable of preventing the migration of used oil spills or releases to the environment.

An April 29, 1992, memorandum from EPA's Assistant Administrator for Solid Waste and Emergency Response [19] addresses aboveground storage tank technologies that may be used to provide secondary containment at SPCC-regulated facilities. The memorandum states that alternative aboveground storage tank systems that have capacities generally less than 12,000 gallons may provide protection of navigable waters substantially equivalent to that provided by the secondary containment systems listed in 40 CFR 112.79(c) of the SPCC regulation. An example of an alternative aboveground storage tank system that generally would provide substantially equivalent protection of navigable waters is a shop-fabricated double walled tank installed and operated with overfill prevention measures that include an overfill alarm, an automatic flow restrictor or flow shut-off, and constant monitoring of all product transfers including used oil. Used oil tanks meeting with the secondary containment equivalency discussed in the memorandum of April 29, 1992, are considered to be in compliance with the secondary containment requirements for aboveground tanks established in today's rule.

g. *Storage Limit.* Commenters to the 1985 proposed rule felt that the proposed 10-day limit on storage at transfer facilities was too short a period of time to accumulate and consolidate sufficient amounts of used oil for cost effective transportation. The Agency agrees with the commenters. In 1991, EPA proposed an alternative time limit (*e.g.*, 35 days) as a limit specifying the length of time of which used oil must be delivered to the final destination (*e.g.*, processors, re-refiners, or burners). Based on the favorable comments, EPA believes that at transfer facilities, used oil storage in normal course of operation typically occurs for less than 35 days. The Agency, therefore, has decided to allow used oil storage for no more than 35 days at transfer facilities. A transfer facility at which used oil is stored for more than 35 days must comply with the requirements finalized today for processing/re-refining facilities established under the 40 CFR part 279, subpart F. Also, EPA notes that the 35-day storage limit applies to the in-use storage tanks at transfer facilities and does not apply to the abandoned aboveground storage tanks used to store used oil, or to such tanks taken out of service. The requirements for the abandoned storage tanks are those currently in effect. For example, the owners/operators of transfer facilities must evaluate residues left in aboveground tanks taken out of service to make a hazardous waste determination (*i.e.*, whether the residues exhibit characteristics of toxicity, ignitability, corrosivity, or reactivity). If an aboveground tank at a transfer facility contains a hazardous waste, the tank will be managed in accordance with existing RCRA controls, including subpart J standards for tank closure.

Finally, the Agency concluded that a storage limit of 35 days at transfer facilities is protective of human health and the environment when applied in conjunction with the secondary containment requirements for aboveground storage containers and tanks promulgated today. EPA believes that storage at transfer facilities will be for a short duration when used oil is in transit between generators to processors, re-refiners, fuel oil dealers, and transfer facilities before reaching the ultimate recycler or burners. Any spills and leaks occurring during storage must be contained within the containment area, discovered, and cleaned up in a timely manner. If EPA, in the future, determines a need for a closure standard for transfer facilities to ensure that used oil contamination at a facility prior to the facility closing must be addressed then the Agency may take such a step.

Underground storage tanks (*i.e.*, those with more than 10% of the surface area of the tank(s) and associated pipes underground) used to store used oil at used oil transfer facilities remain subject to the requirements of 40 CFR part 280, independently. Also, many facilities remain subject to the Spill Prevention Control and Countermeasure requirements of part 112 of 40 CFR, independently.

[18] See "Summary Descriptions of Sixty-Three 'Used Oil' Superfund Sites" and "Summary Descriptions of Used Oil-Related Damages at RCRA-Permitted Facilities."

[19] See memorandum from Don R. Clay, Assistant Administrator, to EPA Regional Directors regarding "Use of Alternative Secondary Containment Measures at Facilities Regulated under the Oil Pollution Prevention Regulation (40 CFR part 112)," April 29, 1992.

h. *Response to releases.* Any spill or release of used oil from aboveground storage units (tanks and containers) at a used oil transfer facility must be stopped, contained, and cleaned up upon detection. Spilled used oils must be cleaned up and properly managed. If necessary, the unit must be removed from service, the contents removed, and the unit repaired prior to returning it to service. These requirements do not apply to past releases that have occurred at transfer facilities prior to the effective date of the used oil program within an authorized state in which a used oil facility is located. This requirement applies only when there is a release to the environment. Under this rule, this would not include releases within contained areas such as concrete floors or impervious containment areas, unless the releases go beyond the contained areas.

In the case of a release of used oil from an underground storage tank, the owner or operator of the used oil transfer facility must comply with the requirements of 40 CFR part 280, subparts E and F.

In addition to the provisions listed above for releases of used oil, and in addition to the corrective action requirements for releases from USTs provided in 40 CFR part 280, subpart F, used oil transporters are required, under CERCLA section 103, to report a release of hazardous substances to the environment when the release is equal to or in excess of the reportable quantity (RQ) for the particular substance. Used oils that are contaminated with CERCLA hazardous substances (*e.g.*, due to the presence of elevated levels of lead) are subject to CERCLA release reporting requirements. Therefore, releases of such contaminants into the environment in quantities greater than the reportable quantity must be reported to the National Response Center. The current RQs for CERCLA hazardous substances are listed in 40 CFR 302.4. In addition, under 40 CFR part 110, any discharge of oil that violates applicable water quality standards or causes a film or sheen on a water surface must be reported to the National Response Center.

i. *Rebuttable Presumption.* Since the rebuttable presumption now will apply to all used oils, EPA is requiring used oil transporters to determine the total halogen content as used oil shipments prior to accepting the shipments for transport. EPA believes that the majority of used oil transporters are already complying with this requirement to ensure that used oil has not been mixed with halogenated solvents, since the majority of used oil that is currently recycled is used as fuel for energy recovery and is therefore subject to 40 CFR part 266, subpart E, recodified today as 40 CFR part 279, subpart G.

If the halogen level exceeds 1,000 ppm, the used oil is presumed to be mixed with a halogenated hazardous waste, and must be managed as a hazardous waste, unless the transporter rebuts the presumption as described above. The transporter may accept such shipments of used oil as a hazardous waste transporter, but if the original generator of the hazardous waste cannot be identified, the transporter may have to assume hazardous waste generator responsibilities and comply with both the generator standards of 40 CFR part 262 as well as the hazardous waste transporter requirements of 40 CFR part 263.

j. *Recordkeeping.* Transporters are required to maintain records (for at least three years) documenting the acceptance and delivery of each used oil shipment. For the purposes of complying with the recordkeeping requirements in today's rule, used oil transporters need only enter the required information or documentation for each used oil shipment into a collection or operating log.

Used oil transporters must keep records for each used oil shipment accepted for transport from an original used oil generator or another transporter and maintain copies of each record for a period of at least three years. Records for each shipment accepted by transporters must include: (1) The date; (2) the name, address, and EPA identification number (if applicable) of the party who provided the used oil for shipment; (3) the quantity and type of used oil accepted; and (4) the dated signature of the party offering the shipment.

Used oil collectors and transporters must also keep and maintain for at least three years records of each shipment of used oil that is delivered to another transporter, used oil burner, fuel marketer, or used oil processor/re-refiner. Records for each delivery must include: (1) The date; (2) the name, EPA identification number, and address of the receiving facility or transporter; (3) the quantity of used oil delivered; and (4) the dated signature of a representative of the receiving facility.

EPA believes that these recordkeeping requirements are necessary to monitor the flow of used oil within the used oil management system and to discourage any adulteration of used oil by any used oil handler, by providing a paper trail documenting all parties who handled the used oil. EPA believes that the rebuttable presumption, as well as the requirement that used oil collectors and transporters keep records, will provide sufficient incentive to discourage adulteration of used oils. Past practices of used oil collectors and transporters storing mixtures of used oil and hazardous waste have resulted in damages to the environment. Further discussion of such damages is provided in the background documents that accompany this rule.

It is EPA's understanding that most of the recordkeeping requirements established in today's rule are already being done as normal business and accounting practices by used oil transporters. As noted in the background information for the Regulatory Impact Analysis of today's rule, a used oil industry representative indicated that such records are maintained and the practice of keeping such records is not uncommon. The recordkeeping requirements promulgated today for used oil transporters are very similar to those proposed in the 1991 Supplemental Notice.

k. *Exports of used oil.* If a used oil transporter provides used oil for export or exports used oil from the United States, the transporter must maintain a record of the name and address of the receiving facility, the quantity of used oil exported to a foreign country, and the date the used oil is exported from the United States.

l. *Closure.* In 1985, EPA proposed closure requirements for used oil transfer facilities. Commenters opposed these requirements due to the fact that the requirements are overly burdensome. Since the secondary containment requirements promulgated today should mitigate the migration of almost all releases of used oil to the environment, and since today's requirements require used oil spills and releases to be cleaned up upon detection, EPA has decided that closure requirements for aboveground storage areas are not necessary and therefore, the Agency is not promulgating closure requirements for used oil transfer facilities with aboveground storage units. EPA also notes that the majority of damages from improper storage of used oil have occurred at recycling facilities, rather than transfer facilities, which suggests differential standards are appropriate. (Note: Used oil transporters that store used oils in underground storage tanks are required under the Subtitle I standards to close all units used to store used oil prior to closing or abandoning the facility.)

m. *Other applicable provisions.* In addition to the requirements provided in subpart E, used oil transporters who recycle used oil either by blending, processing or re-refining, must comply with the requirements of subpart F. Used oil transporters who burn used oil on-site must comply with the requirements of subpart G of part 279, as well as the provisions of subpart E. If a used oil transporter markets used oil fuels, the transporter must comply with the requirements for used oil fuel marketers in subpart H of part 279. Used oil transporters who either dispose of used oil or use used oil as a road oiling agent must comply with subpart I of part 279.

In the 1991 Supplemental Notice the Agency proposed inspection, facility preparedness, and corrective action provisions. EPA has decided against such requirements because (a) the SPCC program-based inspection, preparedness, and emergency response provisions, (b) response to releases provision for transfer facilities, and (c) limits on the storage period are adequately protective against potential environmental damages associated with used oil storage. A used oil transporter who stores used oil for greater than 35 days is considered to be a used oil processor and must comply with the standards for used oil processing and re-refiners.

4. Standards for Used Oil Processing and Re-refining Facilities

As discussed in section VI.A of this preamble, the past used oil management practices at used oil processing facilities has resulted in environmental damage. This is evident from the identification of approximately 25 sites on the National Priority List where used oil was identified as one of the major constituent of concern. Similarly, EPA has discovered environmental damage associated with used oil management at RCRA facilities managing used oil in solid waste management units. Of the used oil facilities that the Agency has studied, 16 facilities has used oil spills; 15 facilities had leaking tanks and/or containers; 32 facilities recycled and disposed of used oil and wastes in surface impoundments and pits; 5 facilities placed used oil recycling sludges in waste piles directly on the ground; and one facility land-farmed used oil recycling sludges. Virtually all the surface impoundments or pits at these facilities were unlined. These instances lead EPA to believe that used oil processing/re-refining facilities pose the biggest problems due to used oil mismanagement, justifying the toughest controls (e.g. preparedness, secondary containment, closure, analysis plan, and tracking) established today.

a. *Applicability.* A used oil processing or re-refining facility is defined in § 279.1 as "a facility that processes used oil." Used oil processing means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for the production of, fuel oils, lubricants, or other used oil-derived product. Processing includes, but is not limited to: Blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining. Used oil re-refining may include settling, filtering, catalytic conversion, fractional/vacuum distillation, hydrotreating, or polishing. The products of used oil processing or re-refining are likely to include specification fuel, reconstituted lubricating oils/fluids, distillate fuel, lube feedstock, asphaltic bottoms, and other non-fuel oil-derived product.

In addition to the requirements of part 279 subparts C and E, used oil generators and collectors/transporters are subject to all applicable processor and re-refiner requirements, if they process/re-refine used oil on-site. Used oil processing and re-refining facilities that also burn used oil fuel on-site for energy recovery must comply with the provisions in subpart G of part 279, except burning that occurs incidental to processing at used oil processing and re-refining facilities in compliance with § 279.50(b)(3)(ii). Table VI.4 lists requirements and provides the regulatory citations.

TABLE VI.4.—STANDARDS FOR USED OIL PROCESSORS AND RE-REFINERS

Requirement	New or existing	Regulatory citation
Processors who perform other management activities	New	§ 279.50(a).
Notification and EPA identification number	Existing for processors/re-refiners who are marketers; new for others.	§ 279.51.
Preparedness and prevention	New	§ 279.52(a).
Contingency plan and emergency procedures	New	§ 279.52(b).
Rebuttable presumption for used oil	Existing for processors/re-refiners managing used oil fuel	§ 279.53 (a), (b), and (c).
Exceptions from rebuttable presumption for CFC and metal-working oils.	New	§ 279.53(c) (1) and (2).
Type of management units	New	§ 279.54(a).
Good condition above ground tanks and containers	New	§ 279.54(b).
Secondary containment for containers and existing and new above ground tanks.	New	§ 279.54 (c), (d), and (e).
Labelling of containers and tanks	New	§ 279.54(f).
Response to releases	New	§ 279.54(g).
Closure for containers and above ground tanks	New	§ 279.54(h).
Analysis plan	New	§ 279.55.
Indicator parameters	N.A.	None.
Tracking—acceptance, deliveries, and recordkeeping	Existing for processors/re-refiners who are marketers (invoices); new for others.	§ 279.56.
Operating record	New	§ 279.57(a).
Biennial reporting	New	§ 279.57(b).
Off-site shipment	New	§ 279.58.
Management of residues	New	§ 279.59.
SPCC requirements, including spill prevention and control	Existing (applicable independently)	40 CFR Part 112.
UST requirements, including corrective action and financial responsibility.	Existing (applicable independently)	40 CFR Part 280.
Inspections	N.A.	None.

b. *Notification Requirements.* An owner or operator of a used oil processing/re-refining facility must notify the appropriate EPA Regional Administrator using EPA Form 8700–12, stating the location and general description of used oil management activities. In lieu of using the EPA Form 8700–12, owners and operators may notify the EPA Regional Administrator of their location and general description of used oil management activities in a letter. Upon receipt of this form, EPA will issue an EPA identification number to the facility. Owner/operators who have previously notified the Agency of their hazardous waste management or used oil activities and received an ID number need not renotify.

In addition to notifying EPA of any recycling activities and receiving an EPA identification number, an owner or operator of a used oil processing or re-refining facility that receives used oil from foreign sources must comply with all applicable RCRA requirements for the importation of solid and hazardous wastes.

c. *Preparedness and Prevention.* Owners or operators of used oil processing and re-refining facilities must operate and maintain the facility in a manner that will minimize the possibility of any fire, explosion, or unplanned sudden or non-sudden release. The existing Federal (*e.g.*, SPCC), state, and local (*e.g.*, fire ordinances) preparedness and prevention requirements are specific to certain aspects of facility operation. The existing RCRA requirements for preparedness and prevention, by contrast, pertain to the toxic or hazardous nature of the material or waste. The Agency, therefore, believes that RCRA requirements are necessary to ensure that used oil processing and re-refining facilities are maintained and operated to prevent possible fires, explosions, or releases of used oil to the environment. EPA believes that the preparedness and prevention requirements promulgated today are merely incremental to those currently in place and the existing compliance procedures can easily be expanded to comply with these additional requirements. Section 279.52(a) requires owners and operators to comply with the requirements for preparedness and prevention similar to those established for hazardous waste management facilities in 40 CFR part 265, subpart C. These requirements include maintenance and operation of the facility, required equipment, testing and maintenance of the equipment, access to communication or alarm system, required aisle space, and arrangements with local authorities.

The 1985 proposal required preparedness and prevention measures as part of the Permit-by-rule requirements for recycling facilities. The proposed requirements were the same as those established for hazardous waste management facilities. EPA believes that the majority of processing and re-refining facilities have preparedness and prevention measures in place as a part of good business and operational practices, therefore the Agency does not think such requirements will be overly burdensome (see background document on cost analysis that is in the docket for today's rule). In addition, local fire regulations, state regulations, and the Occupational Safety and Health Act require some level of preparedness and prevention measures.

d. *Contingency Plan and Emergency Procedures.* Section 279.52(b) requires owners or operators of used oil processing and re-refining facilities to prepare a contingency plan designed to minimize hazards in case of a sudden or non-sudden release, fire, explosion, or similar emergency. The variable composition of used oil (*e.g.*, the possibility of very low flash point oil) makes this more of a concern than for other types of oil facilities. The requirements for contingency plans and emergency procedures were taken from 40 CFR part 265, subpart D, because of the similarity to hazardous waste facility operations. These requirements include purpose and implementation of the contingency plan, content of the contingency plan, copies of the contingency plan, amending the contingency plan, emergency coordinator, and emergency procedures.

EPA believes that the majority of processing and re-refining facilities have contingency plan and emergency procedures in place as a part of good business and operational procedures. Therefore, EPA believes that such requirements are not overly burdensome. In addition, local fire regulations, state regulations, and the Occupational Safety and Health Act require development of contingency plans and emergency procedures.

e. *Storage Requirements.* Owners and operators of used oil processing and re-refining facilities must store all used oils either in tanks or containers, and all tanks and containers must be maintained in good condition (*i.e.*, no visible signs of leaks or structural damage or deterioration). Based on the comments received in 1985 and 1991, EPA believes that the practice of storing used oil in lagoons, ponds, pits or surface impoundments is not common and, in addition, that such storage is inherently unsafe and poses an undue risk to human health and the environment. Both in 1985 and 1991, EPA proposed to ban the use of lagoons, ponds, pits, or surface impoundments for used oil treatment or storage due to the unreasonable risks posed to human health and the environment. Many commenters concurred with EPA on this point. Therefore, today's rule prohibits the storage of used oil in any surface impoundment, pond, pit, lagoon or similar land-based unit, unless the unit is kept in full compliance with the requirements in subpart K of part 264/265 or unless the unit contains only wastewaters with *de minimis* quantities of used oil as specified in 40 CFR 279.10(f).

In 1991 Supplemental Notice, EPA proposed inspection requirements for a discovery of used oil release or spill. Today, EPA is not finalizing the proposed inspection requirement because the preparedness requirement established today for used oil processing/re-refining facilities and the inspection provision of the SPCC program include inspection for used oil releases to the environment or oil spills, respectively.

The requirements established today cover all used oil processors/re-refiners, regardless of their location and regardless of the size of any single tank the facility or the total storage capacity of the facility. The SPCC and UST requirements are independently applicable to processing or re-refining facilities.

The owner or operator of a used oil processing or re-refining facility must label all aboveground tanks and containers used to store used oil and all fill pipes used to transfer used oil to underground storage tanks with the words "used oil." EPA is requiring owners and operators to clearly label storage units used to store oil to prevent accidental mixing by ensuring that only used oil is placed in tanks reserved for the storage of used oil.

Owners and operators of used oil processing and re-refining facilities who store used oil in containers or aboveground tanks as defined in § 279.1 must equip the storage area surrounding the tanks or containers with a floor made from material(s) that is impervious to used oil. Owners and operators must also equip the storage area with secondary containment structures (dikes, berms, and/or retaining walls) that are made of a material(s) that is impervious to used oil and capable of

containing all potential spills and releases of used oil from the tanks or containers until the facility owner or operator can take measures to clean up the released used oil. The floor under existing storage tanks must cover the entire area within the containment structure, except where existing tanks meet the ground. EPA believes that requiring owner/operators with existing tanks to retrofit the containment structure would be financially burdensome and that there is little opportunity for contamination to occur under the small area where the tank touches the ground. For new tanks, the floor must cover the entire area within the containment structure.

In 1985, EPA reserved several sections of the proposed rule for the soon-to-be promulgated secondary containment requirements for hazardous waste storage tanks. Many commenters disagreed with EPA's proposal to require used oil recycling facilities to comply with the hazardous waste tank secondary containment provisions. In the 1991 Supplemental Notice, EPA stated that secondary containment standards similar to those required by the SPCC program may be adequately protective of human health and the environment and may be less burdensome to used oil processing and re-refining facilities. In the 1991 Supplemental Notice, the Agency specifically discussed the provisions for maintaining berms, dikes, or retaining walls around existing aboveground storage tanks. The Supplemental Notice included a diagram depicting a secondary containment structure that the Agency was considering requiring. The Agency believes that a secondary containment structure constructed around the entire storage area will provide adequate protection to the environment against spills and releases of used oil that may occur during used oil storage. Many commenters agreed with the Agency's assessment that this type of secondary containment is adequate for used oil storage areas. Some commenters urged the Agency to include secondary containment requirements in Phase I management standards, suggesting that storage-related spills and releases should be controlled.

Upon evaluation of the comments, and a further consideration of past storage practices at used oil processing and re-refining facilities that have either become Superfund sites or have had RCRA enforcement actions taken against them, EPA has concluded that there is a need to control releases of used oil during storage at processing and re-refining facilities. In fact, as documented by the Agency in the background documents supporting this final rule, past storage practices at used oil management facilities have resulted in releases of used oil to the environment, and in some cases, substantial damages to human health and the environment.[20]

Of the used oil facilities that the Agency has studied, 16 facilities had used oil spills; 15 facilities had leaking tanks and/or containers; 32 facilities recycled and disposed of used oil and wastes in surface impoundments and pits; 5 facilities placed used oil recycling sludges in waste piles directly on the ground; and 1 facility land-farmed used oil recycling sludges. Virtually all the surface impoundments or pits at these facilities were unlined.

Of the facilities that had spills, two were disposing solely used oil/oil recycling wastes, one was a storage facility only, and the remaining 13 were used oil processing and re-refining facilities. Of the facilities that had leaking tanks, two facilities were used oil storage facilities, one was a used oil disposal facility, and the remaining 12 were used oil recyclers. Of the facilities that disposed of used oil and wastes after recycling used oil in surface impoundments, 3 were also generators, 4 were solely disposal facilities, 1 was a storage facility, and the remaining 24 were processing and re-refining facilities. All five facilities that stored used oil recycling sludges in waste piles were processing and re-refining facilities. The facility that land-farmed used oil recycling sludges was a used oil recycling facility.

EPA has concluded that the containment of used oil releases is necessary, since contamination of soil, ground water, or surface water resources with used oil could reduce water quality and make water non-potable or could cause significant ecological harm. EPA believes that used oil handling and storage-related releases at used oil processing and re-refining facilities can be effectively controlled by the use of floors and containment structures made from an oil-impervious material.

As discussed above, the storage areas around aboveground tanks and under storage containers must be equipped with oil-impervious floors and secondary containment structures (dikes and berms or retaining walls) capable of containing all potential spills and releases of used oil until the discovery and clean-up of released used oil.[21] The floor under existing storage tanks must cover the entire area within the dike, berm or retaining wall, except areas where portions of existing tanks meet the ground. This requirement is applicable to the aboveground tanks that are existing when the states adopt the part 279 used oil management standards and the state rule containing the Federal used oil management standards takes effect. The impervious floor under new storage tanks must cover the entire area within the containment structure. The effective date is the same as that discussed for existing tanks.

EPA believes that the secondary containment requirements established today adequately protect against used oil releases to ground water and the existing SPCC requirements provide protection against spills reaching navigable waters. EPA has determined that secondary containment requirements similar to those in 40 CFR parts 264/265, subpart J are not necessary since the requirements promulgated today will effectively contain any spilled or released used oil within the containment structures. Also, the requirement that the entire containment structure be made of a material impervious to used oil will prevent the migration of used oil to soils, surface waters, and ground water.

Although the secondary containment requirements promulgated today are somewhat less burdensome than those required under 40 CFR parts 264/265 subpart J, any used oil processing/re-refining facility that is currently in compliance with the subpart J requirements (*e.g.*, the facility has double-walled tanks with double-walled or otherwise contained pipes) will be deemed in compliance with the secondary containment requirements promulgated today, and therefore need not install a new secondary containment system at the facility. EPA does want to clarify that all aboveground tanks and containers must be within a secondary containment structure that is impervious to used oil, and capable of preventing the migration of used oil spills or releases to the environment.

An April 29, 1992, memorandum from EPA's Assistant Administrator for Solid Waste and Emergency Response (discussed above) addresses

[20] See "Summary Descriptions of Sixty-Three 'Used Oil' Superfund Sites." and "Summary Descriptions of Used Oil-Related Damages at RCRA-Permitted Facilities."

[21] For further discussion of the basis for the secondary containment requirement and the materials suitable for constructing impervious floor and dikes, berms, or retaining walls, see section VI.E.5. of today's preamble.

aboveground storage tank technologies that may be used to provide secondary containment at SPCC-regulated facilities. The memorandum states that alternative aboveground storage tank systems that have capacities generally less than 12,000 gallons may provide protection of navigable waters substantially equivalent to that provided by the secondary containment systems listed in 40 CFR 112.79(c) of the SPCC regulation. An example of an alternative aboveground storage tank system that generally would provide substantially equivalent protection of navigable waters is a shop-fabricated doubled walled tank installed and operated with overfill prevention measures that include an overfill alarm, an automatic flow restrictor or flow shut-off, and constant monitoring of all product transfers including used oil. Used oil tanks meeting with the secondary containment equivalency discussed in the memorandum of April 29, 1992, are considered to be in compliance with the secondary containment requirements for aboveground tanks established in today's rule.

In the 1991 Supplemental Notice, EPA requested comment on the types of material that could be used to construct oil-impervious structures including berms, dikes, retaining walls, and floors. EPA did not receive any comments specific to the request. Since publication of the 1991 Notice, the Agency has studied the permeability of some commonly used construction materials such as cement, clay, asphalt, plastic, and steel. EPA concluded that the selection of a suitable material for construction depends upon the size of the storage units and the site characteristics. As stated in the cost analysis section of this preamble, most of these materials are currently used for the purpose of containing releases under other regulatory programs. EPA believes that any of these materials can adequately prevent releases of used oil to the environment from storage units that are properly operated and maintained at used oil processing and re-refining facilities, therefore, the Agency feels there is no need to specify the type of oil-impervious construction material that must be used at all facilities. For the cost analysis that accompanies today's rule, EPA used a secondary containment scenario that includes a 3-inch asphalt floor with an annual application of sealant. EPA believes that a floor of this type is adequate to contain used oil releases since there should be minimal or no vehicular traffic around the storage tanks or within the bermed, diked, or walled area. When installing new tanks, however, facility owner/operator will have to take into considerations the size of the tank that the floor will be resting upon. Depending on the size of the floor's thickness, and the type of floor installed, the appropriate construction material may change.

f. *Applicable UST and SPCC requirements for used oil storage tanks.* If used oil is stored in underground tanks, the owner or operator of a used oil recycling facility must comply with the requirements of 40 CFR part 280, including the corrective action and closure requirements of part 280 subparts F and G. An underground storage tank used for storage of used oil that meets the underground storage tank definition under 40 CFR 280.12 must comply with part 280 requirements. As discussed in the 1991 Supplemental Notice, technical standards for underground storage tanks (USTs) have been promulgated since publication of the 1985 proposed rule. The Agency stated in the preamble to the UST final rule (53 FR 37112; September 23, 1988) that EPA believes tht used oil, when stored in underground tanks, presents risks similar to other petroleum products stored in USTs. As a result, EPA determined that used oil USTs must comply with the tank upgrading, operation and maintenance, corrosion protection, corrective action, closure, and financial responsibility requirements promulgated under part 280 for other petroleum product USTs. The Agency believes that the subtitle I standards are sufficient to protect human health and the environment from potential releases of used oil from USTs.

In addition to all of the storage requirements discussed above, used oil processing and re-refining facilities that meet the applicability criteria for the SPCC standards contained in 40 CFR part 112 also must comply with all applicable SPCC requirements, including maintaining containment and diversionary structures to control releases of oil from aboveground storage tanks.

g. *Response to releases.* Upon detection of any release or spill within the secondary containment area from transfer operations or from aboveground storage units (tanks and containers), owners or operators must take steps to stop and contain the release, to remove all released used oil from the containment area, and repair or replace the damaged tank or container. Release used oil must be removed from the area and must be managed (*i.e.*, treated, recycled, disposed) in accordance with the requirements of this part and any other applicable parts of this chapter. In addition, whenever there is a catastrophic release or spill of used oil and used oil migrates beyond the containment structure and reaches the environment, corrective measures must be taken to adequately protect human health and the environment from potential damages. This requirement does not apply to past releases of used oil that occurred prior to the effective date of the used oil program within an authorized state in which the facility is located. This above requirement applied only when there is a release to the environment. Under this rule, this would not include releases within contained areas such as concrete floors or impervious containment areas, unless the releases go beyond the contained areas.

In addition to the provisions listed above for releases of used oil and, in addition to the corrective action requirements for releases from USTs provided in 40 CFR part 280, subpart F, owners of used oil processing and re-refining facilities are required, under CERCLA section 103, to report a release of hazardous substances to the environment when the release is equal to or in excess of the reportable quantity (RQ) for the particular substance. Used oils that are contaminated with CERCLA hazardous substances (*e.g.*, due to the presence of elevated levels of lead) are subject to CERCLA release reporting requirements. Therefore, releases of used oil containing such contaminants into the environment in quantities greater than the reportable quantity must be reported to the National Response Center. The current RQs for CERCLA hazardous substances are listed in 40 CFR 302.4. In addition, under 40 CFR part 110, any discharge of oil that violates applicable water quality standards or clauses a film or sheen on a water surface must be reported to the National Response Center.

h. *Analysis Plan.* The owner or operator of a used oil processing or re-refining must establish analytical procedures to ensure a thorough knowledge of the contents of any used oil handled at the facility. These procedures are to be established through a written analysis plan describing the procedures to be used to comply with the analysis requirements, as required by § 279.55. Each facility must prepare an analysis plan which a facility will follow when performing sampling and analysis, keeping records, and when complying with the analytical requirements for documenting the used oil fuel specification.

For the analyses described below, the owner or operator must specify in the facility's analysis plan the frequency of sampling and analysis. The owner or operator must perform sampling and analysis on a schedule that is adequate to meet all applicable requirements and assures that all used oils managed at the facility are handled safely and in compliance with all applicable used oil and Subtitle C regulations.

i. Rebuttable presumption and halogen determination. An owner or operator of a used oil processor/re-refiner facility must ensure that any used oil handled (*i.e.*, received from a used oil generator or a collector/transporter) at the facility is not mixed with hazardous wastes. Procedures should be established within the facility's written analysis plan (required in § 279.55) and the results of each procedure documented as part of the facility operating record, to demonstrate that the owner or operator will assure against such mixing and comply with the halogen determination requirements of § 279.53. The analysis plan should specify how, or with what methods, the owner or operator will analyze used oil to assure that the used oil is not mixed with hazardous wastes. As discussed above, EPA presumes that any used oil containing more than 1,000 ppm halogens has been mixed with chlorinated hazardous wastes. To rebut this presumption, the owner or operator must be able to document (or provide a copy of documentation from prior used oil handlers) at any time that the used oil was not mixed with hazardous waste (*e.g.*, by demonstrating that the presence of 1,000 ppm or more of total halogens is from some other source). The Agency believes that a facility-prepared analysis plan will identify at what time during the chain of custody, the facility owner/operator will rebut the presumption of mixing. In addition, EPA believes that an analysis plan will also indicate a procedure for handling a shipment of the adulterated used oil if received by an used oil processor/re-refiner facility especially when the given facility is not a co-management facility (*i.e.*, permitted to manage hazardous waste). A facility may rebut the presumption of mixing when accepting used oil for processing, re-refining, or blending; upon producing a specification fuel; prior to marketing it as off-specification fuel; or both when accepting used oil and shipping recycled products (*e.g.*, burner fuel, lube feedstock, or reclaimed lubricants) to the end users.

Under § 279.53, analyzing for total halogens is required to determine whether used oil has been mixed with chlorinated (halogenated) listed hazardous wastes. If the total halogen content exceeds 1,000 ppm, it is presumed that mixing has occurred per the rebuttable presumption codified today as § 261.3(a)(2)(v).

As discussed above, the rebuttable presumption does not apply to: (1) Used metalworking oils/fluids containing chlorinated paraffins on the condition that these used oil/fluids are recycled under a tolling arrangement to produce reclaimed metalworking oils/fluids; or (2) used compressor oils removed from refrigeration units and that are contaminated with chlorinated fluorocarbons (CFCs), on the condition that these used oils are destined for reclamation of the CFCs at an off-site CFC reclamation facility. The exemption applies to these two types of oils that are not mixed with used oil from other sources or other halogenated hazardous wastes.

EPA is concerned about the burning of used oils containing high levels of halogens in uncontrolled burners. Both metalworking oils and used compressor oils that contain a high level of halogenated constituents (>4,000 ppm) can not be burned safely in uncontrolled boilers and furnaces. If such used oils are to be burned for energy recovery, they must be burned at facilities that are in compliance with subpart G of part 279 or, if the used oil has been mixed with hazardous waste, with subpart H of part 266.

ii. Specification used oil fuel. Owners or operators who claim an exemption from regulation under 40 CFR 279.11 for specification used oil fuel must analyze for the specification used oil fuel parameters (*i.e.*, arsenic, cadmium, chromium, lead, total halogens, and flash point) and provide documentation of testing and sampling methods used and the frequency of sampling in the facility's analysis plan. If an owner or operator of a used oil processor/re-refiner facility markets specification used oil fuel, the owner or operator must document that the used oil meets the specification levels in the facility operating record, and must cross reference documentation that the used oil meets the specification to the burner or marketer.

iii. Indicator parameters. In 1985, EPA proposed that all owners and operators of used oil processing and re-refining facilities that also manage hazardous wastes at the same facility, test their used oils for the presence of indicator parameters. Indicator parameters are those constituents that were commonly present in the hazardous wastes handled at the facility, but not commonly found in used oils.

The majority of commenters who commented on the proposed analytical requirements stated that there is no need for the proposed indicator parameter testing at co-management facilities. The commenters responding to the indicator parameter testing requirement argued that co-management facilities are hazardous waste facilities operating under interim status or a full permit. Commenters stated that intentional mixing of used oils and hazardous wastes does not occur at co-management facilities due to the fact that mixing would reduce the marketability and recyclability of the used oil. Upon consideration of the public comments, the Agency has decided not to finalize the proposed requirements for indicator parameter testing.

For the analyses described above, the owner or operator of a used oil recycling facility must specify in the facility's analysis plan the frequency of sampling and analysis. The owner or operator must perform sampling and analysis on a schedule that is adequate to meet all applicable requirements and assures that all used oils managed at the facility are handled safely and in compliance with all applicable used oil management standards.

In the 1985 proposed management standards, EPA requested comment on the need to specify a specific schedule for sampling and analysis at the processing and re-refining facilities. Although EPA received several comments on the subject, the commenters did not agree either on the need to set a specific schedule or what the schedule should be, if EPA specified a schedule. It is apparent from the public comments received on the subject that it is probably not possible to develop a testing frequency schedule that would be appropriate for all types and sizes of used oil processing and re-refining facilities and take into account the many facility-specific variables that affect sampling and analysis frequencies. Therefore, under today's rule, EPA is not providing a specific schedule, but is requiring owners or operators of used oil processing and re-refining facilities to establish a tailored sampling and analysis schedule that will be appropriate for their particular facility and that meets the intent of the sampling and analysis requirements. This schedule must be documented in the facility's analysis plan.

Records of all analyses conducted at the facility to comply with the sampling and analysis requirements must be

maintained at the facility in the facility's operating record for a period of three years, as specified in § 279.57(a).

i. *Tracking of Used Oil.* Commenters favored the 1991-proposed tracking requirements for used oil processors/re-refiners. EPA believes that these facilities are the ultimate decision makers for the fate of used oil. Therefore, the Agency is finalizing the majority of tracking requirements proposed in 1991 which include keeping the records of each used oil shipment accepted for management and the records of each shipment of used oil delivered to the endusers. The requirements are specified in § 279.56. Furthermore, these records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. These records will provide the information necessary for preparing biennial reports for the facilities' used oil activities required in § 279.57(b) discussed below.

j. *Operating Record.* Owners and operators of used oil processing and re-refining facilities are required to maintain operating records included in § 279.57(a) of today's rule, until closure of the facility. The records include used oil analyses performed in accordance with the analysis plan required under § 279.55 and summary reports detailing all incidences that require implementation of the contingency plan specified at § 279.52(b).

k. *Reporting requirements.* Owners and operators of used oil processing and re-refining facilities are required to report to EPA or an authorized state agency in a letter, on a biennial basis, the following information: (1) The facility's EPA identification number, name and address; (2) the calendar year covered by the report; and (3) the quantities of each type of used oil accepted for recycling and the manner in which used oil is recycled at the site (if the facility recycles used oil in more than one manner, the quantities of used oil recycled should be reported for each recycling method (*e.g.*, burning, processing)).

Reports documenting the information listed above must be submitted to EPA, or the authorized state agency, by March 1 of each even numbered year and cover used oil recycling activities conducted during the previous year. Reports need only be in the form of a letter or spreadsheet and no formal reporting form will be developed.

The information identified above is similar to that listed on the Hazardous Waste Biennial Report Form (No. 8700–13B). The information requests were designed in this manner to assist owners and operators of used oil processor and re-refiner facilities in preparing the used oil biennial report. Many owners and operators are familiar with the hazardous waste biennial reporting form.

Commenters supported the biennial reporting requirements proposed for used oil recyclers in the 1991 Supplemental Notice. As noted in the Supplemental Notice, EPA believes that the information provided by the used oil processing and re-refining facilities will help the Agency when developing Phase II management standards that may include incentives for encouraging DIY-generated used oil recycling and/or more stringent management standards for a particular form of recycling (*e.g.*, used oil burning). EPA also believes that the information collected from processors and re-refiners will allow the Agency to monitor the flow and disposition of used oil and to allow the Agency to assess the relative amounts of used oil that are recycled in different manners.

The reporting requirements promulgated today will apply only to used oil processors and re-refiners and not to used oil burners or to transporters who directly market used oil fuels. The Agency believes that the information that is required of processors and re-refiners will indicate quantities of specification fuel and off-specification fuel produced. In case the Agency wants more specific information on burning activities, EPA may obtain additional information through a survey or by reviewing shipping records maintained by burners and used oil transporters.

l. *Closure.* Owners and operators must ensure that the units and areas used to store and recycle used oil are closed to the extent necessary to protect human health and the environment and in a manner that controls, minimizes, or eliminates post-closure escape of used oil and used oil residues to the ground, atmosphere, and water. At the time of closure, owners and operators who store used oil in aboveground tanks must empty the tanks, remove or decontaminate residues from the tank system, remove and decontaminate containment system components, contaminated media, and any structures and equipment contaminated with used oil released after the effective date of today's rule. Contaminated media, components, structures and equipment, and any used oil removed from the site must be managed as a hazardous waste, if the media, waste, or material meets the definition of hazardous waste, per 40 CFR 261.3(d).

If the facility owner or operator cannot successfully remove and decontaminate all contaminated media at the facility, then the owner or operator must close the tank system(s) and perform closure and post-closure care in accordance with the requirements of 40 CFR 265.310 that apply to landfills. EPA deferred the financial responsibility requirement for used oil processors and re-refiners in the 1985 proposal and 1991 supplemental notice. EPA believes that the closure steps necessary under today's rule can be implemented without the financial responsibility requirements for facility closure established under subpart H of Part 264/265. The closure requirement promulgated today only requires unit closure and removal of contaminated media in the immediate vicinity of the used oil storage/processing unit. EPA believes these costs are not likely to be excessive and can be borne by owners/operators without the need for financial assurance that is necessary for RCRA subtitle C hazardous waste treatment, storage, and disposal facilities. In addition, the Agency believes that many used oil processors/re-refiners would as a business practice routinely set aside funds for complying with the business insurance requirements. (See Cost and Economics Impact of 1992 Used Oil Management Standards, August 1992, available in the docket accompanying this rule.)

Owners and operators who store used oil in underground storage tanks must comply with the closure requirements of 40 CFR part 280, subpart G.

Owners and operators who store used oil in containers must remove all containers from the site at the time of closure. The owner or operator must also remove and decontaminate all residues, contaminated containment system components, contaminated soils, and any structures and equipment contaminated with used oil and manage them as hazardous waste if the media, waste, or material meets the definition of hazardous waste, per 40 CFR 261.3(d) or 261.4(b).

Based on information gathered from documentation of Superfund sites where used oil was identified as one of the major constituents of concern managed at the site, EPA is convinced that closure requirements for tanks and containers and for the area at existing facilities are important. EPA believes that the secondary containment requirements for contalners and tanks established today will minimize the need for extensive closure in the future since the potential for a release of used oil to migrate into the environment will be reduced. The requirements of today's rule should ensure against damages that could result at abandoned sites by: (a)

controlling (containing) used oil spills or releases that may occur during the operation of used oil processing and re-refining facilities and (b) requiring the removal of contaminated soils in the vicinity of or beneath the aboveground used oil storage and processing units at closure.

m. *Other applicable requirements.* In addition to complying with the requirements of subpart F, owners and operators of used oil processing and re-refining facilities who also transport used oil off-site must comply with the requirements for used oil transporters in subpart E. Owners and operators of used oil processing and re-refining facilities who market used oil fuels must comply with the requirements of subpart H; owners and operators who burn used oil fuels must comply with the requirements of subpart G. Disposal of used oil must be performed in compliance with the requirements specified in part 279, subpart I. Similarly, management of used oil processing and re-refining residuals must be performed in compliance with the existing RCRA requirements. In addition, used oil generators who recycle used oil on-site in a manner other than burning for energy recovery must comply with the standards promulgated today for used oil processors and re-refiners.

5. Standards for Burners of Off-Specification Used Oil Fuel

a. *Applicability.* 40 CFR part 279, subpart G applies to owners and operators of facilities where off-specification used oil fuel is burned for energy recovery in any boiler or industrial furnace and hazardous waste incinerator subject to regulation under 40 CFR part 264 or 265, subpart O. The requirements are shown in Table VI.5. The requirements of 40 CFR part 279, subpart G are applicable to: (1) Owners and operators of facilities that burn used oil fuel for energy recovery where the fuel does not meet the specification levels for the constituents listed in § 279.11 (previously 40 CFR 266.41); (2) transporters or marketers who burn used oil fuels that do not meet the specification for used oil fuels (used oil transporters are also subject to 40 CFR part 279, subpart E and marketers are also subject to 40 CFR part 279 subpart H); and (3) used oil processing and re-refining facilities that also burn off-specification used oil fuels (used oil processing and re-refining facilities also are subject to 40 CFR part 279, subpart F). Used oil fuel, or used oil sent off-site to be burned for energy recovery, includes any fuel produced from used oil through processing, blending, or other treatment. The requirements of subpart G are merely the existing requirements of the former part 266, subpart E, with minor modifications. EPA summarizes these requirements below.

TABLE VI.5.—STANDARDS FOR BURNERS OF OFF-SPECIFICATION USED OIL

Requirement	New or Existing	Regulatory citation
Burners who perform other management activities.	New	§ 279.60(b)
Restrictions on burning.	Existing	§ 279.61
Notification and EPA identification number.	Existing	§ 279.62
Rebuttable presumption for used oil.	Existing	§ 279.63(a), (b), and (c)
Exceptions from rebuttable presumption for CFC and metalworking oils.	New	§ 279.63(c)(1) and (2)
Record retention for rebuttable presumption.	New	§ 279.63(d)
Type of storage units.	New	§ 279.64(a)
Condition of tanks and containers.	New	§ 279.64(b)
Secondary containment for containers and existing and new above ground tanks.	New	§ 279.64(c), (d) and (e)
Labelling of containers and tanks.	New	§ 279.64(f)
Responses to releases.	New	§ 279.64(g)
Tracking—acceptance and recordkeeping.	Existing	§ 279.65
Certification	Existing	§ 279.66
Management of residues.	New	§ 279.67
SPCC requirements, including spill prevention and control.	Existing (applicable independently).	40 CFR Part 112
UST requirements, including corrective action and financial responsibility.	Existing (applicable independently).	40 CFR Part 280
Inspections	N.A	None
Closure	N.A	None

The requirements under part 279, subpart G are not applicable to persons burning used oil fuel that meets the used oil fuel specifications of 40 CFR 279.11,[22] provided the marketer or burner of such fuel complies with the requirements of that section.

Used oils that are hazardous wastes may be burned for energy recovery in compliance with subpart G of part 279, instead of 40 CFR part 266, subpart H (standards for burning hazardous waste in boilers and industrial furnaces), provided the used oil fuel is hazardous solely because it exhibits a characteristic of hazardous waste by its own nature or was mixed with hazardous waste generated by a conditionally exempt small quantity generator regulated under 40 CFR 261.5.

Burners who treat off-specification fuel by processing, blending, or other treatment to meet the specification levels contained in 40 CFR 279.11, must comply with the processing and re-refining facility standards of 40 CFR part 279, subpart F and the used oil marketer standards of subpart H of part 279.

b. *Restrictions.* Used oil fuel that is off-specification (*i.e.*, used oil fuel exceeding any of the specifications of 40 CFR 279.11) may be burned only in industrial furnaces or boilers (defined in 40 CFR 260.10) that meet the following criteria: (1) Are located on the site as part of a manufacturing process (*e.g.*, cement kilns, asphalt plants) where materials are transformed into new products, including the component parts of products, by mechanical or chemical processes; (2) are utility boilers that generate electric power, steam, heated or cooled air, or other gases or fluids for sale for energy purposes; (3) are used oil-fired space heaters, provided that the burner complies with 40 CFR 279.23; or (4) are incinerators in compliance with parts 264/265, subpart O. (See § 279.61 for the specific restrictions.)

c. *On-site Burning in Space Heaters.* Used oil may be burned in a used oil-fired space heater, provided that the space heater burns only used oil that the owner or operator generates and/or used oil obtained from household DIY oil changers. The space heater must have a maximum capacity of not more than 0.5 million BTU per hour and the combustion gases from the burner unit must be vented to the ambient air.

d. *Notification Requirements.* Burners of off-specification used oil fuel must notify the appropriate EPA Regional Administrator using EPA Form 8700–12 or by submitting a letter, stating the location and general description of used oil burning activities, unless the owner or operator of the facility has previously notified the Agency of their used oil burning activities. Upon receipt of this notification, EPA will issue an EPA identification number to the burner. This requirement does not apply to: (1)

[22] The specification levels are: arsenic = 5 ppm, maximum; cadmium = 2 ppm, maximum; chromium = 10 ppm, maximum; lead = 100 ppm, maximum; flash point = 100°F, minimum; total halogens = 4,000 ppm maximum.

Burners who only burn specification used oil fuels; (2) burners of specification used oil fuel who receive the fuel from used oil marketers who have notified EPA of their used oil management activities and who have provided appropriate information concerning specification fuel claims; or (3) generators who burn used oil that is generated on site only in used oil-fired space heaters.

e. *Certification.* Before a burner may accept the first shipment of off-specification used oil fuel from a marketer, the burner must provide a one-time written notice certifying that the burner has notified EPA stating the location and general description of the burner's used oil management activities and that the burner will burn used oil only in an industrial furnace or boiler identified in 40 CFR 279.61(a).

f. *Storage Requirements.* Owners or operators of facilities that burn used oil for energy recovery must store all used oils either in tanks or containers. All aboveground tanks and containers must be maintained in good condition (*i.e.*, no visible signs of leaks or structural damage). EPA believes that the practice of storing used oil in unlined lagoons, ponds, pits or surface impoundments is not very common and it is inherently unsafe and poses an undue risk to human health and the environment.[23] Therefore, today's rule requires that all used oils be stored in aboveground tanks or containers or in underground storage tanks.

The owner or operator of a facility that burns used oil must label all aboveground tanks and containers used to store used oil and all fill pipes used to transfer used oil to underground storage tanks with the words "used oil." EPA is requiring owners and operators to clearly label storage units used to store used oil to assure against accidental mixing and ensure that only used oil is placed in tanks reserved for the storage of used oil.

Owners or operators of facilities that burn off-specification used oil and who store used oil in aboveground tanks or containers must equip the storage area surrounding the existing tanks or storage area holding containers with a floor and secondary containment structures (dikes, berms, or retaining walls) that are made of a material that is impervious to oil and that are capable of containing all potential spills and releases of used oil to soil, surface water, and ground water from the tanks or containers until the facility owner or operator can take measures to clean up the release. The floor under existing storage tanks must cover the entire area within the containment structure, except where existing tank portions meet the ground. For new tanks, the floor must cover the entire area within the containment structure (for additional discussion, see section VI.5.f of this preamble).

EPA is requiring secondary containment for aboveground storage areas because the Agency has documented that past storage practices at used oil management facilities has resulted in releases of used oil to the environment. In the background documents supporting this final rule, EPA has documented damages that have occurred as a result of past storage practices at used oil management facilities.[24]

If used oil is stored in underground tanks, the owner or operator of a used oil burner facility must comply with the UST requirements of 40 CFR part 280. In addition, burner facilities that meet the applicability criteria for the SPCC standards in 40 CFR part 112 must comply with those provisions as well.

g. *Response to releases.* Owners and operators of used oil burning facilities who store used oil in aboveground tanks and containers must comply with the same release response requirements as those promulgated for used oil processing and re-refining facilities. Whenever there is a release or spill of used oil to the environment, the owner or operator must remove released used oil and contaminated media from the area, including used oils held in the containment area. Released used oils and contaminated media removed from the area must be managed (*i.e.*, treated, recycled, disposed) in accordance with the requirements of this part and any other applicable parts of this chapter. These requirements do not apply to past releases that occurred at the facility prior to the effective date of the used oil program within an authorized state in which the facility is located. This above requirement applies only when there is a release to the environment. Under this rule, this would not include releases within contained areas such as concrete floors or impervious containment area, unless the releases go beyond the contained area.

In addition to the provisions listed above for releases of used oil and, in addition to the corrective action requirements for releases from USTs provided in 40 CFR part 280, subpart F, used oil burners of off-specification fuel are required, under CERCLA Section 103, to report a release of hazardous substances to the environment when the release is equal to or in excess of the reportable quantity (RQ) for the particular substance. Used oils that are contaminated with CERCLA hazardous substances (*e.g.*, due to the presence of elevated levels of lead) are subject to these CERCLA release reporting requirements. Therefore, releases of used oil containing such contamination into the environment in quantities greater than the reportable quantity must be reported to the National Response Center. The current RQs for CERCLA hazardous substances are listed in 40 CFR 302.4. In addition, under 40 CFR part 110, any discharge of oil that violates applicable water quality standards or causes a film or sheen on a water surface must be reported to the National Response Center.

h. *Used oil fuel analysis (halogens).* A used oil burner must ensure that any used oil fuel handled at the burner's facility is not mixed with hazardous wastes. EPA will continue to presume (per § 261.3(a)(2)(v), previously § 266.40) that any used oil containing more than 1,000 ppm halogens has been mixed with chlorinated hazardous wastes. To rebut this presumption, the owner or operator must be able to document that the used oil fuel was not mixed with hazardous waste (*e.g.*, by demonstrating that the presence of 1,000 ppm or more of total halogens is from some other source).

Note: Used oil fuel processors or marketers may conduct analyses to document that the used oil contains less than 1000 ppm halogens. Used oil burners may use this information in making their own determination and in rebutting the presumption of mixing.

i. *Recordkeeping and Reporting Requirements.* A burner who receives an invoice from a used oil marketer under the requirements of Subpart H must maintain a copy of each invoice for at least three years. Documentation of any used oil fuel analyses also must be maintained for at least three years. A burner must maintain a copy of each certification sent to a marketer for at least three years from the date the burner received the last shipment of off-specification used oil fuel from that marketer. A burner may use an acceptance/delivery log in lieu of an invoice.

[23] Any and all storage in of used oil in surface impoundments or other land-based units is strictly prohibited unless the owner or operator of the unit operates the unit in full compliance with 40 CFR part 264/265, subpart K.

[24] See "Summary Descriptions of Sixty-Three 'Used Oil' Superfund Sites." and "Summary Descriptions of Used Oil-Related Damages at RCRA-Permitted Facilities." Both of these documents are available in the docket for today's rule.

No reporting requirements are being promulgated for used oil burners of off-specification fuel. EPA believes that the Agency will be able to obtain burner-specific information by inspecting invoices kept by burners and the acceptance/delivery logs kept by collectors/transporters, processors, and re-refiners.

j. *Possible future regulations for used oil burners.* EPA received several comments suggesting that EPA revise the used oil fuel specification levels, particularly for lead. Such comments are beyond the scope of today's rule, since EPA did not propose any changes and EPA does not address these comments here. None the less, as noted in the 1991 Supplemental Proposal, EPA intends to conduct additional studies of used oil burning activities to address public concerns regarding potential lead emissions from used oil burners. After such studies are complete, EPA may either develop emissions standards for used oil burners or may revise the current specification limits for used oil fuels, if analysis suggests that additional controls are necessary to protect human health and environment.

EPA believes that the phase-down of lead in gasoline over the past 6 to 8 years may have resulted in a significant reduction of lead levels in used oils generated from gasoline-powered engines. The Agency's pre-1985 data show that used automotive engine oils that were sampled from storage tanks at processing and re-refining facilities averaged around 1,200 ppm lead. On the other hand, the Agency's data that were collected in 1988 and 1989 and the data submitted by the commenters in response to the 1991 Supplemental Proposal suggest that used oils from gasoline-powered engines that were sampled from storage tanks averaged approximately 80 ppm lead. These data suggest that the Lead Phase-down Program may have had a significant effect on reducing the lead in gasoline. Based on these data, EPA believes that a significant amount of used oil does not fail the used oil fuel specification limit for lead. However, if the Agency determines that the specification limit for lead should be lowered, greater quantities of used oil may then exceed the specification requirements.

k. *Closure Requirements.* In the 1985 and 1991 proposals, EPA considered deferring closure requirements for used oil burners, based on the lack of risk data supporting the need for closure requirements at these sites. Since 1991, while reviewing the available Superfund site information and RCRA enforcement case data, the Agency has not located substantive damage information specific to burners. This leads the Agency to believe that environmental damages at used oil burner sites does not appear to be a substantial concern (*i.e.*, have not resulted in environmental damage of a significant magnitude that it has resulted in the site being identified as the NPL site). Therefore, the Agency believes that closure requirements for used oil burners are unnecessary at this time, hence, EPA is deferring such requirements.

6. Standards for Used Oil Fuel Marketers

On November 29, 1985, EPA promulgated notification, analysis, and recordkeeping requirements for marketers of used oil fuels as part of the used oil final Phase I burning regulations (40 CFR 266.43). Today EPA is consolidating all of the regulations related to recycled used oil into one part of the CFR to alleviate confusion on the part of the regulated community and to provide consistency in the regulations. Therefore, the used oil fuel marketer requirements previously codified as 40 CFR 266.43 will now be codified as 40 CFR part 279, subpart H (Standards for Used Oil Fuel Marketers). EPA is changing the designated codification of the used oil fuel marketer requirements and reordering the appearance of these requirements without modification. Table VI.6 summarizes the requirements established for the used oil fuel marketers.

TABLE VI.6.—STANDARDS FOR MARKETERS OF USED OIL FUEL

Requirement	New or existing	Regulatory citation
Prohibitions	Existing	§ 279.71.
On-specification used oil-analysis	Existing	§ 279.72.
Notification and EPA identification number	Existing	§ 279.73.
Tracking—off-specification fuel	Existing (invoices)	§ 279.74(a).
Tracking—on-specification fuel	Existing	§ 279.74(b).
Recordkeeping	Existing	§ 279.74(c).
Certification	Existing	§ 279.75.

The used oil fuel marketer requirements are applicable to all used oil handlers that market used oil fuels. Fuel marketing is an activity that may be undertaken by used oil generators, transporters, processors, re-refiners, and used oil burners. Used oil handlers may certify that they are marketing off-specification used oil fuel or first claim that the used oil fuel they are marketing to non-industrial boilers and furnaces meets the specification limits established for used oil fuel. Under today's regulation, no party in the used oil industry can be simply a marketer. EPA believes that marketing is an activity that a used oil handler undertakes when selling used oils as a fuel. An entity that is selling off-specification used oil fuel can either be a generator or a transporter or in some cases a processor or re-refiner. Similarly, an entity selling specification used oil fuel may be a generator, transporter, processor, re-refiner, or a fuel oil dealer. A decision to market used oil as an off-specification fuel is solely an economic decision depending on the costs associated with marketing used oil as on-specification fuel (*i.e.*, used oil fuel meeting the specification limits). In the former case, used oil is shipped, as generated or consolidated without any processing, to an industrial boiler or furnace. In the later case, however, used oil is blended or processed to produce on-specification used oil fuel and is analyzed to document the claim that it meets the specification limits. Therefore, the marketing requirements of 40 CFR part 279, subpart H, in addition to all other applicable provisions of part 279, apply to all used oil marketers.

Under today's definition of marketers, it is logically impossible for a facility to be only a marketer of used oil fuel. EPA believes that a marketer of used oil fuel must either have generated, transported/stored at a transfer facility, and/or processed the used oil before marketing the used oil fuel. EPA received comments stating that persons who blend used oils from other sources should be regulated only as marketers. EPA disagrees. EPA believes that any person who blends different used oils

should be treated as processor (recycler) under today's rules. The blending and fuel production processes, and the associated storage of oils and fuels, have posed environmental risks as documented in the information available for the fuel oil marketers identified as NPL sites and from the RCRA enforcement actions being pursued by the Agency. Thus, EPA believes it is appropriate to regulate those who blend used oils to produce fuels under the processor/re-refiner standards established today. However, those facilities who consolidate shipments of used oil before sending the consolidated oil for recycling are classified as transfer facilities and are subject to the transporter standards.

7. Standards for Disposal of Used Oil and Use as a Dust Suppressant

a. *Disposal of Used Oil.* As explained above, EPA believes that most used oils are recyclable. Since there are cases where particular types or batches of used oil are not recyclable, EPA understands the need to provide for the safe and proper disposal of used oils in these limited circumstances. EPA is today promulgating disposal standards for non-recyclable used oils under 40 CFR part 279, subpart I given in Table VI.7.

TABLE VI.7.—STANDARDS FOR USE AS A DUST SUPPRESSANT AND DISPOSAL OF USED OIL

Requirement	New or existing	Regulatory citation
Disposal	New	§ 279.81
Use as a dust suppressant	New	§ 279.82

On May 20, 1992 (57 FR 21524), EPA promulgated a listing determination for used oils that are disposed. EPA determined that it was not necessary to list these used oils because those used oils that present an undue risk to human health and the environment typically and frequently fail the toxicity characteristic leaching procedure. Since such used oils are identified as a RCRA hazardous waste, EPA saw no need to list any used oils as hazardous waste when they are disposed.

Used oils that are identified as hazardous wastes and are not recyclable must be handled and disposed of as hazardous wastes in accordance with all applicable subtitle C regulations. Used oils that are hazardous wastes because they exhibit one or more characteristics of hazardous waste and are destined for disposal must be accompanied by a hazardous waste manifest when shipped off-site and must be transported to a permitted or interim status subtitle C disposal facility. In addition, all wastes that fail the extraction procedure toxicity (EP) test are currently prohibited from land disposal under 40 CFR part 268.

Used oils that are not mixed with listed hazardous wastes and do not exhibit a characteristic may be disposed of in an industrial solid waste landfill or a municipal solid waste landfill. Used oils that are disposed in municipal solid waste landfills after October 9, 1993, must be managed in accordance with the requirements of 40 CFR part 258. In addition, all nonhazardous used oils that cannot be recycled must be disposed of in accordance with all applicable Federal and State solid waste regulations.

b. *Use as a Dust Suppressant.* In the 1985 proposed used oil management standards, EPA proposed to list all used oils as hazardous waste. Since the Hazardous and Solid Waste Amendments banned the use of all hazardous wastes (those that are either listed or exhibit a hazardous waste characteristic other than ignitability) as dust suppressants, the proposed listing of used oils had the effect of banning the use of any used oil as a dust suppressant. Used oils are banned from use as dust suppressants under the statute only when mixed with a listed hazardous waste or when they exhibit the Toxicity Characteristic.

Although the Agency has determined that used oils need not be listed as hazardous wastes, EPA still believes that used oils should not be used for road oiling or as dust suppressants due to the tendency for used oils to contain hazardous wastes or be contaminated with hazardous or toxic constituents. There was overwhelming support from commenters for a ban on the use of used oil for road application and dust suppression. Direct application of used oil to the land allows for direct exposure of used oils and all potential contaminants to the environment. Therefore, in today's final rule, EPA is banning the use of all used oils for road or land application.

EPA recognizes that some states have established road oil control programs. A recent survey of states, however, showed that road oiling is not widely practiced, even in states that have such programs. Today's rule provides for states who wish to continue to allow road oiling under programs designed to control such activities to petition EPA to exempt their state from the national ban. This petition would usually be part of the state authorization package, but it may be a separate petition (*i.e.*, from an unauthorized state). The petition should show how the state will prevent the road application of used oil that is mixed with hazardous waste or that exhibits the toxicity characteristic. The petition should generally demonstrate how the state will minimize environmental impacts of road oiling.

E. Response to Major Comments

1. Listing Used Oil as a Hazardous Waste

Commenters overwhelmingly supported the option not to list used oils as hazardous waste but to rely on management standards to control potential mismanagement of used oils. In fact, commenters to the 1991 Supplemental Notice overwhelmingly supported listing Option Three, no listing of used oils and reliance on management standards to control mismanagement of used oils. EPA has concluded that existing EPA regulations, and particularly the Toxicity Characteristic, adequately control the disposal of used oils that are hazardous wastes. The new Federal criteria for municipal solid waste landfills in part 258, as well as the stormwater regulations and TSCA requirements, adequately regulate the disposal of nonhazardous used oils.

Based on public comments and the recycling presumption discussed in the 1991 Supplemental Notice, EPA has determined that used oils that are recycled do not pose a substantial present or potential threat to human health and the environment when they are managed in accordance with the standards promulgated today from the time they are generated until they are recycled in addition to the existing requirements under other statutes or regulatory programs. In making a no-list determination, EPA considered the technical criteria for listing in 40 CFR 261.11, the fate and possible mismanagement of recycled used oils, and the impact of the management standards proposed in 1985 and 1991 on the recycling of used oils, and as discussed above, EPA has concluded that the management standards issued today control those problems that have occurred in used oil recycling. Therefore, listing used oil is not necessary to ensure adequate protection.

2. Mixtures

Commenters were nearly unanimous in support of EPA's proposal to exclude wipers and other materials contaminated with used oil from the proposed listing. Based on public

comments and commenter-submitted data, the Agency has decided not to list any used oils as hazardous wastes. Therefore, mixtures of used oils and other materials are not automatically hazardous wastes via the mixture rule. Mixtures of used oils and listed hazardous wastes will be regulated as hazardous wastes, whether they are recycled or not. Mixtures of used oil and characteristic hazardous waste that exhibit a hazardous waste characteristic also must be managed as a hazardous waste, whether they are recycled or not. However, mixtures of nonhazardous materials and used oils that exhibit a characteristic by their own nature (*i.e.*, the used oil is characteristically hazardous prior to mixing) or mixtures of used oil and characteristic hazardous waste that do not exhibit a characteristic are subject to the standards in part 279 if they are being recycled. Of course, if such a mixture cannot be recycled and the mixture exhibits a characteristic, it must be disposed in accordance with all applicable subtitle C regulations.

Mixtures of used oil and other materials generally will be regulated under part 279. However, as discussed above, EPA has exempted wastewaters contaminated with very small amounts of used oil, since such mixtures are not likely to pose a significant hazard. If mixtures of used oil and sorbent materials from which used oil can not be separated, however, are burned for energy recovery, the Agency believes that such recycling is acceptable. In addition, it is subjected to the existing used oil specification fuel requirements that are in effect since 1985 and recodified in part 279 today.

3. Controls on Disposal

Commenters supported EPA's proposal to develop guidelines for the disposal of non-hazardous used oil. The standards being promulgated today as part 279 apply to all used oils that are being recycled. Based upon the representations of commenters that most used oil is recyclable and is indeed recycled once it is collected, EPA has adopted a "recycling presumption," which means that the Agency presumes that all used oils will be recycled. A used oil handler who has used oils that cannot be recycled must dispose of the used oil properly. Hazardous used oils must be disposed in subtitle C facilities and new Federal Criteria for municipal solid waste landfills under part 258, which go into effect in October, 1993, will control nonhazardous used oils that are disposed. For these reasons, EPA believes that establishing guidelines for the disposal of used oils is unnecessary.

4. DIY-Generated Used Oils

Nearly all the commenters said that listing used oil as a hazardous waste would discourage the recycling of DIY-generated used oil. As discussed above, EPA is not listing any used oils as hazardous wastes. As a result, the major disincentive cited by commenters for used oil generators to continue accepting used oil from DIY generators has been removed. Nonetheless, in the September 1991 Supplemental Proposal, EPA put forth several non-regulatory incentive options for encouraging increased collection and recycling of DIY-generated used oils. EPA has not evaluated all of these incentive programs to date but will continue to assess the need for DIY incentives, and development of a non-regulatory scheme for DIY used oils may be part of a future used oil package.

5. Recycling Presumption Criteria

As discussed in VI.B of this preamble almost all commenters supported the concept of the recycling presumption, but few supported establishment of formal criteria of "nonrecyclability." Commenters were concerned that the criteria for rebutting the recycling presumption (*e.g.*, water content, BTU value, or any other measure) are not a meaningful measure of recyclability, since basically any used oil can be recycled and the degree of treatment prior to recycling is a function of the cost to the used oil generator. EPA has determined that it is not practical to set such criteria. Therefore, EPA is not establishing formal criteria on which to base a determination of nonrecyclability. Rather, a used oil handler who is not recycling used oils under part 279 must dispose of the used oil in compliance with applicable regulations. In other words, the used oil handler then must determine whether the used oil exhibits any characteristic of hazardous waste and manage the used oil accordingly.

6. Ban on Road Oiling

Commenters agreed that used oils are currently not widely used for road oiling and dust suppression. In fact, 41 out of 50 states prohibit the use of used oil for these purposes. The Agency is aware, however, that the other states allow this practice under certain permitting conditions and at least one commenter favored allowing road oiling under specified conditions. Today's final rule is promulgated pursuant to pre-HSWA authority, specifically, the Used Oil Recycling Act of 1980. Due to this fact, a Federal ban on road oiling will be effective only in unauthorized states on the effective date of this rule. The ban will not be effective in authorized states until the state modifies its program by adopting the ban provision and EPA approves the modification. Under the provisions being promulgated today, a state may submit a waiver to EPA to allow road oiling in that state in accordance with state laws and regulations.

7. CERCLA Liability

Most comments received in response to the 1991 Notice supported implementation of the liability exemption in CERCLA section 114(c). In addition, many commenters favored elimination of a small quantity generator category in the part 279 standards. EPA is not establishing any used oil generator cut-off based on generation rate. All used oil generators are subject to uniform standards in part 279. As a result, no change is necessary to trigger the applicability of the exemption from liability in CERCLA section 114(c). Any used oil generator who meets the statutory definition of a "service station dealer" is eligible for the liability exemption.

8. Storage

Most commenters agreed that minimum technical requirements (*e.g.*, tanks and containers kept in good condition, clean up of spills associated with used oil storage) are necessary for the storage of used oil under part 279. The regulations promulgated today require that used oil be stored in tanks and containers that are maintained in good condition, with no visible leaks or signs of deterioration. These minimum standards provide a certain level of control against leaks and releases from storage units. Additional controls, such as secondary containment for storage areas provide further assurance against migration of used oil and prevention against the contamination of soil, surface water, and ground water. EPA believes that at used oil facilities the use of continuously fed tanks for aboveground storage is limited and when such tanks are being used the owner/operator would install proper shut off valves and other controls to ensure that flow of material between the tanks is restricted in case of a tank rupture or other accidental releases.

9. Secondary Containment

Due to commenter's concerns regarding the technical and financial burden associated with the 40 CFR parts 264/265, subpart J secondary containment requirements, the Agency is not requiring full secondary

containment, such as double-walled tanks, for used oil storage. Used oil transporters, processing and re-refining facilities, and burner facilities must instead equip their tanks and containers with secondary containment consisting of dikes, berms, or retaining walls and a floor. All components of the containment system must be sufficiently impervious to oil to prevent any used oil released to the containment system from migrating out to the soil, ground water, or surface waters. EPA believes that the requirements promulgated today are less burdensome than the supart J requirements, yet they are sufficiently protective of human health and the environment. Although, subpart J standards are not required by today's rule, such requirements, such as a double-walled tank, however, would be sufficient for compliance with today's requirements.

10. Financial Responsibility

In the September 1991 Supplemental Notice, EPA proposed to defer the establishment of financial responsibility requirements for the clean up and closure of used oil generator sites and used oil facilities where used oil is stored in aboveground tanks and containers. Based on commenters' concerns regarding the costs and availability of financial assurance mechanisms, the Agency is not requiring used oil handlers to demonstrate financial responsibility for releases of used oil, except as provided under 40 CFR part 280 for underground storage tanks. EPA agrees with the commenters that a formal financial responsibility requirement similar to that in parts 264/265 is overly burdensome for the majority of used oil handlers. In addition, such a requirement should not be necessary because used oil generally is not stored for long periods of time due to its recyclability and marketability as a commodity. Thus, there is little likelihood of catastrophic spills that might require expensive clean up activities. EPA determined that financial responsibility requirements established in subpart H of part 264/265 is not necessary since unit closure requirement rather than a facility closure requirement is imposed today. The facilities managing used oil in land-based units, however, must be closed like RCRA subtitle C landfills, if the used oil contained in the units subject to closure exhibits characteristic of toxicity.

11. Permit-By-Rule

The majority of commenters believed that the permit-by-rule mechanism was unnecessary for implementation and enforcement of the used oil management system under part 279. EPA agrees with the commenters and has not established any permit-by-rule requirements for used oil facilities. The Agency believes that the recordkeeping requirements in part 279 will provide sufficient information for enforcement of the used oil management standards. The Agency decided against the permit-by-rule requirement because the requirements in today's rule are basic management practices that are largely self-implementing and do not require additional permit consideration of site-specific conditions.

12. Definition of Used Oil

In 1985 and in 1991, EPA proposed a definition of used oil that followed the statutory definition of used oil, but included used synthetic oils within the definition. Several commenters contended that synthetic oils should not be included because they are not in the statutory definition. The definition of used oil promulgated today, as the definition proposed in 1985 and 1991, is very similar to the existing definition in 40 CFR 266.40(b) and the statutory definition in section 1004(36) of RCRA. The only change is the inclusion of synthetic oils within the definition, including those derived from coal or shale. As discussed in the 1985 preamble, EPA believes that synthetic oils should be included in the definition of used oil due to the fact that these oils generally are used for the same purposes as petroleum-derived oils, are mixed and managed in the same manner after use, and present the same level of hazard as petroleum-based oils.

VII. Effective Date

Under RCRA section 3010(b), hazardous waste regulations are generally to become effective six months after final rule promulgation. EPA believes that the policy reasons for allowing facilities six months to come into compliance with new RCRA hazardous waste rules also apply to today's used oil management standards. Therefore, today's final rule for the used oil listing decision and used oil management standards will become effective on March 8, 1993. However, as explained below, in most states the rule will take effect in two to three years, as states adopt the new requirements.

VIII. State Authorization

A. Applicability in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA program for hazardous wastes within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Section 3006(h) of RCRA allows EPA to authorize state used oil management programs in the same manner as state hazardous waste programs, even if EPA does not identify or list used oil as a hazardous waste. In addition, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA following authorization of State used oil programs, although authorized States have primary enforcement authority. Sections 3008(d)(4), (d)(5), and (d)(7) of RCRA further clarify that EPA may assess criminal penalties for violations of used oil standards even if it does not identify used oil as a hazardous waste.

For rules written under RCRA provisions that predate the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), States with final authorization administer their hazardous waste programs entirely in lieu of EPA's federal program. The Federal requirements no longer apply in the authorized State. When new, more stringent Federal requirements are promulgated or enacted, the State must develop equivalent authorities within the timeframe set out in the part 271 regulations. The new Federal requirements, however, do not take effect in an authorized State until the State adopts the requirements as a State law. EPA may not enforce them until it approves the State requirements as a revision to the authorized State program.

The Hazardous and Solid Waste Amendments of 1984 revised this system for requirements and prohibitions imposed under provisions added to the statute by the 1984 Amendments. New HSWA rules take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out the HSWA requirements in authorized States until the State is granted authorization to do so. While States must still revise State law to impose HSWA requirements to achieve or retain RCRA authorization, the Federal rules apply until they do so.

Today's rules are generally more stringent than the preexisting Federal rules, which exempted recycled used oils from regulation as hazardous wastes, but provided management standards only for the burning of off-specification used oils. (See former 40 CFR part 266, subpart E.) Thus, states will be required to revise their programs to address today's rules. Moreover, the requirements for burning off-specification used oil promulgated today are more extensive than the preexisting

rules. EPA consequently expects that all States that adopted rules to reflect the existing requirements will need to revise their rules to be equivalent to the new "off-spec" standards.

Today's rules, however, are promulgated under section 3014(a) of RCRA, a provision that predates the 1984 amendments. The rules will take effect in states that do not have final authorization six months from the date that this rule is published in the **Federal Register**. In authorized states, the rules will not be applicable until a State revises its program to adopt equivalent requirements under State law.

40 CFR 271.21(e)(2) requires States that have final authorization to modify their programs to reflect Federal program changes and to submit their modifications to EPA for approval. The deadline by which the State must modify its program to reflect today's rules is July 1, 1994, if a statutory change is not needed, or July 1, 1995, if a statutory change is necessary. These deadlines may be extended in certain cases under 40 CFR 271.21(e)(3). Once EPA approves the State's submission, the State requirements become federally enforceable subtitle C requirements.

Unauthorized States that submit their final applications for initial authorization less than 12 months after the effective date of this rule are not required to include standards equivalent to these in their applications. Such states, however, must modify their programs to reflect today's rules under the schedule described above. States that submit final applications for initial authorization more than 12 months after the effective date of this rule must include standards equivalent to these rules in their applications. 40 CFR 271.3 sets out the requirements a state must meet when submitting a final application for initial authorization.

States with authorized RCRA programs already may have requirements similar to those in today's rule. These States may continue to enforce and administer their standards as a matter of State law. Such State rules, however, have not been assessed against the Federal rules promulgated today to determine whether they meet the statutory and regulatory requirements for authorization. Thus, such State rules cannot be considered part of the Federal RCRA program. EPA may not enforce them at this time.

B. Administration

As discussed in section VI.D. of the preamble, a used oil handler (e.g., transporter, processor/re-refiner, burner of off-specification rule, and marketer) who has not notified the EPA of the used oil management activity (e.g. used oil transporting, used oil processing and re-refining, fuel oil marketing, and burning of used oil as off-specification fuel) must notify the Agency of used oil activities and obtain an EPA identification number. The used oil generators are not subjected to the notification or EPA identification number requirement. Since 1985, the existing used oil marketers and burners of off-specification fuel have notified and have obtained the EPA identification numbers.

Used oil handlers who would be new to used oil recycling business must notify of their activity under regulations established to implement section 3010 of RCRA.[25] That is, in the unauthorized states, a used oil handler who has not previously notified of the used oil management activities must obtain an EPA notification form from EPA and submit the form (or a letter) 90 days from publication of these rules. In authorized states, the notification deadline will be established under state law (which must be no later than 90 days from effective date of state's used oil rulers). The used oil handlers will obtain notification forms from state and submit forms (or letters) with state.

Those used oil generators who intend to become eligible for an exemption from the third-party liability under the CERCLA section 114(c) are required to use the used oil transporters with EPA identification number for sending used oil for offsite recycling. In authorized states, such generators must make sure that the used oil transporter they intend to use has notified the Agency and has an EPA identification number.

IX. Relationship of This Rule to Other Programs

A. RCRA

Land Disposal Restrictions

HSWA mandated that the Agency promulgate land disposal prohibition determinations under a specific schedule for wastes identified and listed prior to the enactment of HSWA (RCRA sections 3004(d), 3004(e), and 3004(g)(4), 42 U.S.C. 6924 (d), (e) and (g)(4). If the Agency failed to promulgate land disposal restrictions by the dates specified in section 3004(g)(4), the wastes were absolutely prohibited from land disposal after May 8, 1990 (or in some cases November 8, 1986, or July 8, 1987). HSWA also requires the Agency to make a land disposal prohibition determination for any hazardous waste that is newly identified or listed in 40 CFR part 261 after November 8, 1984, within six months of the date the new listing is promulgated (RCRA section 3004(g)(4), 42 U.S.C. 6924(g)(4). However, the statute does not provide for automatic restriction or prohibition of the land disposal of such wastes if EPA fails to meet this deadline.

Since used oils that are recycled are exempt from subtitle C regulation under § 261.6(a)(4), used oils that are recycled are not subject to the land disposal restrictions requirements of 40 CFR part 268. In effect, today's part 279 standards are crafted to restrict the land disposal of used oils and, therefore, the used oil management standards further the goals of the LDR program. Used oils that are disposed and exhibit a hazardous characteristic or are mixed with a listed hazardous waste remain subject to all applicable subtitle C requirements, including the land disposal restrictions requirements of 40 CFR part 268.

Wastes, including used oils that are destined for disposal, that exhibit the TC are considered newly identified wastes and are not yet covered by the LDR, unless also EP Toxic (see the Third Land Disposal Restrictions Rule, June 1, 1990, 55 FR 22520). EPA published an Advance Notice of Proposed Rulemaking for the land disposal restriction of TC wastes (56 FR 55160, October 24, 1991) and continues to evaluate the treatability and capacity analyses for these wastes. The Agency is currently developing a final rule to address this issue.

B. MARPOL 73/78

The International Convention for the Prevention of Pollution from Ships (1973), as modified by the 1978 Protocol addressing the same topic, is known as MARPOL 73/78. This is an international agreement that focuses on preventing ship-generated ocean pollution. Annexes I–V of MARPOL 73/78 address ocean pollution from oil, noxious liquid substances (*i.e.*, bulk liquid chemicals), harmful substances, sewage, and garbage, respectively.

Concerning today's rule, the Agency believes that used oil and hazardous waste management requirements apply to used oil generated upon ships only upon removal of the oily waste from the ship. Therefore, used oil on-board is not subject to RCRA requirements, and MARPOL requirements applicable to on-board oil wastes (hazardous and non-

[25] The regulations established today regulate used oil under the authority of section 3014(a) of RCRA. Since EPA is not listing or identifying recycled used oil as a hazardous waste under today's rule, section 3010 of RCRA technically does not apply. EPA is, however, incorporating the 3010 notification requirements into its used oil management standards.

hazardous) will not conflict with the part 279 requirements.

The Agency has determined that the ship owner/operator, the owner of the used oil, and the person removing the used oil from the ship can all be considered "generators" of the used oil for purposes of 40 CFR 260.10. Any of these parties could perform any or all of the duties of the generator.

C. Clean Water Act (CWA)

The Clean Water Act authorizes EPA to control the discharge of pollutants into navigable waters. Section 311(b)(5) of the Act establishes reporting requirements for the release of hazardous substances and oils into navigable waters, which include wetlands. Concerning used oil, releases of oil to navigable waters that (1) cause a sheen to appear on the surface, (2) violate applicable water quality standards, or (3) cause a sludge or emulsion to be deposited beneath the surface of the water or adjoining shorelines is reportable.

The Clean Water Act and recently enacted Oil Pollution Act authorize EPA to regulate activities that may harm navigable waters. As part of this mandate, EPA has established the Spill Prevention Control and Countermeasure (SPCC) program, which is designed to protect surface water from oil contamination. Each facility subject to the requirements is required to prepare and maintain an SPCC plan, which includes provisions for appropriate containment or diversionary structures to prevent discharged oil from reaching navigable waters. Concerning today's rule, used oil handlers must comply with all applicable SPCC requirements contained in 40 CFR part 112. EPA has, however, built the part 279 requirements upon the existing SPCC rules to minimize disruptions to existing regulatory programs.

D. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Section 104 of CERCLA authorizes the federal government to respond to any release or substantial threat of a release into the environment of any hazardous substance and any release or threatened release of a pollutant or contaminant that may present an imminent and substantial danger to public health. Section 101(14) defines the term "hazardous substance" and section 101(33) defines "pollutant or contaminant." Both of these definitions expressly exclude "petroleum, including crude oil or any fraction thereof" unless a petroleum waste has been specifically listed under RCRA or other environmental statutes. The Agency has interpreted the petroleum exclusion to include crude oil and fractions of crude oil, including hazardous substances that are indigenous in petroleum substances. However, hazardous substances that are added to petroleum or that increase in concentration solely as a result of contamination of the petroleum are not part of the petroleum and thus are not excluded.[26] Therefore, used oil that contains a hazardous substance due to contamination is subject to CERCLA reporting, response, and liability provisions.

E. Hazardous Materials Transportation Act (HMTA)

The U.S. Department of Transportation (DOT) regulates the transportation of hazardous materials [27] in commerce (49 CFR parts 171 to 179). The regulations address: (a) Interstate transportation of hazardous materials by motor vehicle, rail car, aircraft and vessel and (b) intrastate transportation of certain hazardous materials (hazardous wastes, hazardous substances, and flammable cryogenic liquids in portable tanks and cargo tanks) by motor vehicle. Used oil may be flammable or combustible under DOT classifications. In addition, used oil that exhibits a characteristic of hazardous waste and is destined for disposal is classified as a hazardous material due to the requirement that hazardous used oils being disposed must be accompanied by a hazardous waste manifest.

Used oil generators (shippers) have to comply with any and all applicable DOT regulations for identification and classification, packaging, marking, labeling, and manifesting of used oil that is destined for disposal. Transporters (carriers) will have to comply with any and all applicable DOT regulations for placarding, manifesting, recordkeeping, reporting, and incident response for such used oils.

F. Toxic Substances Control Act (TSCA)

TSCA authorizes EPA to control the manufacture, import, use and disposal of chemical substances. Section 6(e) of TSCA mandates EPA to control the manufacture, import, use, and disposal of polychlorinated biphenyls (PCBs). A primary use of PCBs, a viscous oil, was as an insulating material for electrical equipment (dielectric). PCBs were almost always mixed with mineral oil, silicone, or other oily materials. Because of the potential hazards posed by the uncontrolled use and disposal of PCBs, EPA has established a comprehensive program to control PCBs from cradle to grave.

TSCA regulations control the use of PCBs used for dust suppression. 40 CFR 761.20(d) prohibits the use of "waste oil" that contains any detectable concentration of PCBs as a sealant, coating, or dust control agent. Concerning today's rule, used oil used for dust suppression must meet the requirements of both RCRA and TSCA.

A release of 1 pound of PCBs into the environment must be reported immediately to the National Response Center in accordance with section 103(c) of CERCLA. However, TSCA regulations require that any spill of material containing 50 ppm or greater PCBs into sewers, drinking water, surface water, grazing lands, or vegetable gardens must be reported. Concerning today's rule, if the used oil contains PCBs, the most stringent, applicable reporting requirement must be followed.

X. Regulatory Impact Analysis

Today's final rule combines a decision not to list recycled used oil with a set of tailored management standards for recycled used oil under section 3014 of RCRA applicable to used oil generators and subsequent handlers. This section of the preamble summarizes the cost and economic impact screening analysis of the 1992 used oil management standards.

Executive Order 12291 (46 FR 13193) requires that a regulatory agency determine whether a new regulation will be "major" and, if so, that a Regulatory Impact Analysis (RIA) be conducted. Three criteria are used to define a major rule: (1) That the rule has an annual effect on the economy of $100 million or more, (2) that the rule creates a major increase in costs or prices, or (3) that the rule has significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of US based enterprises to compete with foreign-based enterprises in domestic or export markets. The Environmental Protection Agency believes that the 1992 Used Oil Management Standards do not comprise a major rule, and therefore a complete RIA is not required. The results of this cost screening analysis support this conclusion. A further discussion of the cost screening analysis is available in the regulatory docket for today's rule in a report titled, "Cost and Economic Impact of 1992 Used Oil Management Standards," August 4, 1992.

[26] Memorandum from Francis Blake, EPA's General Counsel, concerning the CERCLA petroleum exclusion, July 31, 1987.

[27] Any material identified or classified as a hazardous waste under RCRA is classified a hazardous material under DOT (49 CFR 171.3).

Based on the preliminary cost screening analysis for the options presented in the September Supplemental Notice, public comments received, and subsequent analysis in response to comments, the Agency estimates that these management standards will most likely impose nationwide annualized compliance costs of less than $10 million per year, within a range of between $4 and $11 million. Costs of this magnitude are not expected to result in measurable changes in recycled used oil flows, either for on-site uses or within the commercial recycling sectors. With possible localized exceptions, the Agency does not expect the standards to result in a substantial number of business failures among used oil recycling companies or to affect employment, prices, or international trade in any measurable degree.

Although the Agency has not been able to adequately quantify the benefits to the environment or to human health of these management standards, due to the lack of comprehensive data on the frequency and extent of used oil releases to the environment, EPA believes that today's decisions will result in two principal types of benefits. First, by requiring specific secondary containment measures for used oil storage and other tankage at all major used oil handling facilities, the Agency is providing an additional safeguard against any substantial environmental release of used oil to the soil, to ground waters, or to surface waters at points where releases would be most likely to occur.

The Agency does not expect today's decisions by themselves to substantially expand used oil recycling. However, it is a relatively low cost insurance policy against the environmental mismanagement of used oil resources within the commercial recycling sectors. Implementation of section 3014 management standards limits CERCLA liability for those automobile servicing facilities that accept do-it-yourselfer (DIY) used oil for recycling and thus encourages expansion of collection locations. Thus, today's rule is consistent with the could provide a necessary complement to a wide variety of possible future private sector, State, or federal government initiatives to encourage increased recycling of household and other do-it-yourselfer used oil not presently being adequately managed and which is generally not effectively controlled by traditional regulatory approaches.

The remainder of this section of the preamble briefly describes the major options for management standards considered by the Agency in reaching today's decision, summarizes estimated compliance cost, and reviews expected impacts.

A. Regulatory Options Considered

EPA has considered a wide range of management standards options over the years, ranging from a listing of used oil as a hazardous waste under virtually full subtitle C standards for generators and handlers to various tailored options under section 3014(a) of RCRA. A summary of the approximate compliance costs for several of these alternatives is presented in Table X.1.

TABLE X-1.—HISTORICAL COMPARISON OF COMPLIANCE COSTS OF OPTIONS CONSIDERED FOR USED OIL MANAGEMENT STANDARDS

[Millions of 1991 dollars per year]

Listing recycled used oil as hazardous waste without tailored 3014 standards (1985 proposal option updated to 1991) [1]	$500
Section 3014 management options (1985 proposal updated to 1991) [2]	$204
1991 supplemental notice [3]	$2-25
1992 final rule	$4-11

[1] Option assumed burning as used oil fuel under part 266, subpart E, rather than as hazardous waste under subparts D and H. Costs are updated to 1991 from the 1985 RIA to allow for inflation and certain intervening regulatory changes such as the underground storage tank (UST) rule. However, costs for this historical proposal do not include estimates for corrective action for prior releases or cost implications of the mixture and derived from rules. Costs are not revised to address comments on the 1985 proposed rule.

[2] Costs updated from the 1985 RIA to allow for inflation, but not to respond to comments.

[3] Costs are as presented in table X.D.1. (56 FR 48071, September 23, 1991). They are not revised to address comments. However, see subsection A.2 below for discussion of other cost estimates.

1. Listing Recycled Used Oil Without Tailored Standards

Listing recycled used oil, without issuing special section 3014 Management Standards or otherwise exempting recycled used oil from subtitle C regulations, would have subjected recycled used oil generators, handlers, and users to the full spectrum of hazardous waste management standards. These would include recordkeeping and manifesting of all shipments, storage requirements including secondary containment, facility closure and financial assurance, and additional burning restrictions. In the extreme it would also impose facility corrective action for prior releases, although this was not covered in the 1985 RIA or in the present update.

Since this was not presented as an explicit option in the September 1991 Supplemental Notice, the Agency did not present compliance cost estimates for Full subtitle C management of recycled oil in the 1991 Cost and Impact Screening Analysis. However, a similar Full subtitle C management scenario was presented as Alternative 1 in the Regulatory Impact Analysis (November, 1985) accompanying the 1985 used oil proposed rulemaking. The Agency has subsequently revised and updated the 1985 estimate for this regulatory alternative to account for intervening changes in certain subtitle C requirements, recycle market changes and general cost inflation. We found that, even assuming retention of the present part 266 subpart E used oil burning requirements (in place of the part 266, subparts D and H hazardous waste burning standards for boilers and furnaces), the incremental annual cost of subtitle C management for recycled used oil would still cost about $500 million per year, or about $0.53 per gallon of oil recycled. This does not include consideration of additional possibly substantial costs for prior release corrective action or for implications of the mixing and derived-from rules.

The Agency has long recognized that used oil management standards drawn too stringently could be counterproductive: that by imposing too high a cost on acceptable forms of recycling, the regulations could actually encourage increased dumping and other environmentally undesirable practices by generators, commercial haulers, and others.

Although incremental management costs of $0.53 per gallon for recycling would still be substantially less than alternative subtitle C disposal options for most generators, costs in this range would also provide a strong incentive to avoid regulation altogether by engaging in illegal dumping and improper land disposal and burning activity. The Agency notes that virtually all used oil fuel is currently sold for little more than and in some instances less than 53 cents per gallon: Imposing regulatory requirements which cost this amount would virtually eliminate recycling incentives within most of the commercial recycling sector.

2. Tailored Standards Under Section 3014

More appropriate to today's final rule, the Agency has also considered a wide range of tailored standards under section 3014(a) of RCRA. The estimated annual cost in the RIA for the 1985 proposal was $167 million ($204 million updated to 1991). The 1985 proposal closely paralleled subtitle C Standards in many respects.

The September 1991 Supplemental Notice provided additional options which were substantially less costly than earlier proposals, but which still covered all sectors and a wide range of permitting, testing, spill prevention and cleanup, storage, recordkeeping and reporting requirements.

The nationwide annual costs estimated for the 1991 Supplemental Proposal ranged from $25 million per year (with no small quantity generator exemption) to about $2 million per year with an extensive SQG exemption.

Various commenters criticized the 1991 estimates as being too low. In a few instances it was argued that EPA's unit costs for specific activities or services were too low. Another criticism was that the Agency has overestimated the degree to which various standards were already being met, either through normal business practices at establishments (e.g., generator recordkeeping regarding used oil sales transactions) or due to the pre-existence of other federal, State or local regulatory requirements (e.g., OSHA workplace regulations, SPCC spill prevention and storage requirements, or local fire ordinances).

The Agency has reviewed its estimating assumptions in detail. While, in the main, most of the assumptions and resulting cost estimates in the September 1991 costs analysis are reasonable given the limited available data the Agency was able to gather, we agree that many of the estimates are subject to substantial uncertainties and should be interpreted accordingly. In addition, several possible management standard elements were not included in the cost screening, either due to oversight or to the premise of the Notice that certain elements might be considered subsequently in a Phase II proposal. Examples of additional management standard options and annual costs that could have been added in a more extensive analysis include the following:

- Subtitle C secondary containment for used oil collection and processor tankage—$8 million.
- Closure and financial responsibility for processors and rerefiners—$2 million.
- Mandatory testing of all incoming and outgoing shipments of used oil—$15–20 million.

Though not costed in detail, with these and other possible design features, especially more extensive requirements on the nation's nearly 700,000 commercial, industrial, and large farms used oil generators (though not necessarily included explicitly in the September Notice), the national cost estimates for used oil regulation in the 1991 Proposal could well have exceeded $100 million per year. On the other hand, several of the options discussed, especially combinations involving small quantity or other generator exemptions and only selective controls on other sectors, would have suggested costs on the order of $10 million or less.

Based on 750 million gallons per year of used oil entering the commercial used oil recycling system, national management standards costing $100 to $200 million per year would translate roughly into an average of 13 to 26 cents per gallon of oil recycled. As stated above, this additional cost (which EPA estimates to equal or comprise a significant fraction of the price of products derived from used oil) would have dramatically reduced used oil recycling and may have led to increased uncontrolled disposal.

B. Final Rule Compliance Costs

As described in section VI of this preamble, today's rulemaking pertains only to land based management standards for recycled used oil under section 3014(a) of RCRA. It does not impose hazardous waste listing or further regulation of used oil processing or rerefining residuals, which continue to be subject to testing for toxicity characteristics under existing regulations prior to disposal.

1. Nationwide Annual Costs

Table X.2 summarizes the nationwide annual compliance costs for today's rule, by affected sector and for each substantive requirement. Total estimated costs range between approximately $4.1 to $11.0 million per year, with a best estimate of about $7.5 million. The major portion of the total falls on the generating sector ($2.7 to $5.9 million, mostly for future spill cleanups of environmental releases) and on the used oil processing sector ($1.3 to $4.8 million, primarily for biennial reporting, secondary containment of tank storage areas, additional operational recordkeeping, and new closure requirements).

TABLE X–2.—NATIONWIDE ANNUAL COMPLIANCE COSTS FOR 1992 USED OIL MANAGEMENT STANDARDS

[In thousands of dollars]

Requirement	Generators	Independent collectors	Burners (off-spec)	Processors/ rerefiners/fuel oil dealers	Totals
Storage:					
Label tanks and drums	502	2	3	4–5	511–512
Drums and tanks in "good" condition	61–99	(*)	(*)	(*)	61–99
Secondary containment		15–179	11–138	59–964	85–1,281
Reporting, planning, recordkeeping:					
Identification numbers		1	(*)	(*)	1
Biennial report				118–155	118–155
Analysis plan				9–12	9–12
Contingency plan				86–116	86–116
Shipment and delivery records		(*)	(*)	(*)	
Operating record				435–590	435–590
Closure				613–2,938	613–2,938
Response to environmental releases	2,183–5,261	5	(*)	3–4	2,191–5,270
Totals	2,746–5863	23–187	14–141	1,327–4,784	4,110–10,975

* Indicates the facility type is subject to the requirement, but no incremental cost is incurred, while a blank space indicates the facility type is not subject to the requirement.

For several of the line item requirements, a wide range of estimated costs is presented, reflecting substantial uncertainty regarding the extent of existing baseline compliance with the newly imposed standards. As noted in the preamble to the September 1991 Supplemental Notice, many existing federal, State, and local government regulations already directly regulate or impinge upon many of the same practices addressed by today's rules.

For example, at least 7 States regulate used oils as hazardous wastes in varying degrees, and both the federal oil spill prevention and control and counter measures program (SPCC) and OSHA regulations relate to preparedness and prevention as well as cleanup of spilled oils including used oils.

In particular, it is notable that SPCC regulations cover all of the 90 percent or more of all major used oil handling facilities (collectors, processors, fuel oil dealers, and burners) that are located near surface waters. Although the presence of these other regulations has in some instances allowed the Agency to forgo new regulatory requirements, in other cases, lack of data or definitive standards contributes to considerable uncertainty regarding the adequacy of existing standards or extent of compliance. For some additional used oil requirements contained in today's rule, such as spill cleanup for non-SPCC generators or closure soil remediation at processing facilities, EPA does not have sufficiently comprehensive information on the frequency or extent of necessary compliance actions to estimate potential costs more precisely.

2. Individual Facility Costs

Costs at the individual facility level can vary widely, depending on baseline compliance assumptions and differing sector requirements in today's management standards. In general, the lowest unit costs will be experienced by generators, since they face the fewest and (usually) the least costly new requirements. The vast majority of generators will face no incremental costs other than tank or container labeling.

Compliance costs at the individual facility level are presented in Table X.3 for commercial used oil handlers and burners of off-specification used oil fuel. Within the commercial management sectors, the lowest facility-level costs will be born by smaller independent collectors and industrial boiler and furnace burners of off-specification fuel. Burners that only burn specification fuel experience no new requirements and are not considered within the scope of affected facilities in this analysis. For independent collectors and affected burners, the higher cost facilities are those requiring upgraded secondary containment, including both secondary release containment berms and impervious pavement in storage areas. Independent collectors may also incur environmental release costs for releases outside of secondary containment areas. Such facilities may or may not currently be in compliance with baseline SPCC and OSHA regulations. Facilities in these sectors with adequate preexisting secondary containment (50 to 90 percent of facilities according to EPA's costing assumptions) will otherwise face negligible new cost requirements.

TABLE X-3.—ANNUAL FACILITY-LEVEL COMPLIANCE COSTS: COMMERCIAL USED OIL HANDLERS AND BURNERS

Facility type	Total number of facilities [1]	Cost range for affected facilities (dollars per year)
Independent collector	383	$6–$1,976
Minor processors	70	4,280–22,389
Major processors	112	6,989–44,155
Re-refiners	4	9,246–64,671
Fuel oil dealers:		
Low estimate	25	4,280–22,389
High estimate	100	4,280–22,389
Total handlers:		
Low estimate	594	6–64,671
High estimate	669	6–64,671
Burners	1,155	2–335

[1] The number of facilities affected by individual requirements varies by requirement, from zero cost (unaffected) up to all facilities affected.

The most substantial unit costs will be born by facilities in the processing sectors (including processors, rerefiners, and fuel oil dealers that blend off-specification fuel). All facilities in this sector will face additional record keeping, reporting, and contingency planning as well as new tank closure requirements. In addition, the cost estimates assume that some fraction will require upgraded secondary containment, closure soil treatment, and release response costs to meet today's standards.

3. Cost Per Gallon of Used Oil

The total annual costs of these section 3014 management standards ($4.1 to $11.0 million per year), averaged across the nation's total annual recycling rate of about 900 million gallons per year, approximates 0.5 to 1.2 cents per gallon of recycled oil. Focusing only on the 775 million gallons per year flowing through the commercial recycling system, the total nationwide compliance cost of $1.3 to $4.8 million for the recycling sectors would translate into an average cost to commercial recyclers of about 0.2 to 0.6 cents per gallon by EPA's estimates.

Table X.4 summarizes the Agency's cost per gallon estimates in more detail for affected facilities in the commercial handling and burning sectors. The highest cost per gallon figures are at the small processor and fuel oil dealer-blender facilities, with costs at the most affected of these facilities possibly ranging as high as 2.2 cents per gallon. These high relative costs are explained primarily by the relatively low volume of used oil handled and the relatively high fixed costs of secondary containment and closure requiring soil cleanup.

TABLE X-4.—NATIONAL AVERAGE AND INDIVIDUAL FACILITY-LEVEL COMPLIANCE COST-PER-GALLON: COMMERCIAL USED OIL HANDLERS AND BURNERS

Facility type	Total number of facilities	Facility cost per gallon (cents)	National average cost per gallon (cents)
Independent collector	383	0.00–0.66	0.02–0.16
Minor processors	70	0.43–2.24	0.46–1.20
Major processors	112	0.14–0.88	0.16–0.50
Rerefiners	4	0.05–0.32	0.05–0.16
Fuel oil dealers:			
Low estimate	25	0.43–2.24	[1]0.17–0.45
High estimate	100	0.43–2.24	[1]0.69–1.82
Total handlers:			
Low estimate	594	0.00–2.24	0.16–0.20
High estimate	669	0.00–2.24	0.48–0.58
Burners	1,155	0.00–0.22	[1]0.00–0.03

[1] Includes both on-spec and off-spec oil, for a total of 66 million gallons for fuel oil dealers and 55.1 million gallons for burners. If considered separately, off-spec oil will be a fraction of this total, which would make the cost-per-gallon higher.

In contrast, larger processors and rerefiners, even those with similar more stringent requirements, would experience substantially lower per gallon compliance costs, due to the economies of scale inherent in their larger oil volumes and the nature of the major compliance activities. Among the larger facilities in the processing and rerefiner groups, even the worst case situations would still face per gallon costs of less than one cent per gallon of oil. Most facilities would see costs less than a half-cent per gallon, and a substantial fraction would be under a quarter-cent.

C. Final Rule Impacts

1. Effects on Used Oil Flows

Costs for generators are primarily fixed costs or spill clean-up costs which may correlate only weakly with the volume of used oil handled. Therefore, EPA does not expect generator compliance costs to influence acceptance of household Do-It-Yourself (DIY) used oil or to adversely change the relative costs of recycling compared

with dumping or disposal. Thus, used oil flows to recycling should not be negatively affected by these rules, and recycling flows could be positively affected due to reduced spills and spill losses and the CERCLA exemptions for service stations.

Costs for the commercial recycling sectors (including collectors, processors, rerefiners, and fuel oil dealers) total $1.3 to 4.8 million per year. If substantial enough, these costs should have affected recycle flows, either by causing a loss of collector/processor facilities or by being shifted back onto generators and providing a disincentive to recycle. However, set against 775 million gallon per year entering the commercial recycle flows, these total compliance costs average only 0.2 to 0.6 cents per gallon. These costs are not large enough to substantially affect generator decisions concerning recycling, even if all these costs were passed back to the generator in pickup charges. In the worst case, a few small processors could face unit costs as high as 2.2 cents per gallon if they have to install secondary containment and also face soil removal treatment closure costs. This does not suggest major repercussions for recycle flows, but could involve some small processing facility dislocations.

Burners face new compliance costs for storage of used oil derived fuel under today's rulemaking only if they burn off-specification fuel and are not already in compliance due to prior SPCC or OSHA requirements. Numbers of such burners are not known with any accuracy, although about 1200 in total have notified EPA as off-specification burners since 1985. Affected burners have three options:

(1) Incur the costs and either absorb them or pass them back to fuel marketers in negotiated lower prices. The total maximum cost here for the maximally affected burner is 0.2 cents per gallon. It is questionable whether this is a decision-changing level.

(2) Substitute fuel—either virgin fuel oil, currently at a higher cost of up to 15 percent, or specification used oil fuel from another used oil fuel dealer.

(3) Negotiate with the present used oil fuel supplier to pre-blend (with other used oil or virgin fuel) to meet the specification.

Basically the same analysis and options apply to fuel oil dealers that blend off-specification fuel as for burners. EPA's current estimate is that less than 25 percent of marketed used oil-derived fuel is routed through dealers. The fractions of total used oil fuel that is currently off-specification fuel is thought to be low, based on recent communications with used oil processing industry representatives and EPA's own sampling of unprocessed used oil. Based on the low compliance cost per gallon, flows in this sector will not be significantly affected one way or another.

2. Effects on Used Oil Management Structure

In general, the structure of the recycling industry could be somewhat influenced by today's rule. If anything, there will be a tendency for some small processors that do not now have adequate secondary containment to become less competitive (2.2 cents gallon maximum competitive disadvantage). These would generally be the same facilities with prior releases to the environment that would have to be cleaned up at closure (with soil treatment) and they may opt to close. Already-marginal operations with poor credit might not survive this requirement.

There may also be some tendency for rerefiners to be advantaged with respect to other processors because of lower cost/gallon compliance costs. The main factors influencing this judgment are:

1. Rerefiners are newer and are arguably (according to their comments) already in compliance with all or most of today's requirements.

2. Rerefiners are large and have economies of scale relative to smaller processors in terms of compliance cost per gallon.

3. Rerefiners are less affected by fuel market (burner) effects, because they typically produce only a small fraction of output as fuel and the rerefined fuel product is typically unregulated specification fuel.

In summary, the Agency expects no effects on generators. Generators ultimately pay the total costs (either directly or indirectly, via shifting) but these total costs spread over hundreds of thousands of generators will not measurably affect generator day-to-day decisions.

3. Effects on Human Health and the Environment

Since the Agency believes that recycle flows will not be obstructed or seriously altered by this rule, the Agency expects no negative effects on human health or the environment due to compliance costs. Do-It-Yourself oil recycling will not be decreased and may in fact be increased by the CERCLA exemption for service stations.

The four major effects of today's rule making would generally be positive, but of unknown magnitude. These include:

1. Increased spill cleanup and reduced environmental releases for generators.

2. Better secondary containment and future spill cleanup for larger handlers.

3. Closure requirements that provide for cleanup of prior tankage area releases at processor/handler facilities.

4. More comprehensive tracking at the collector level, due to expansion of notification and recordkeeping for all collectors and not just those who currently market directly to burners.

4. Relationship to Future Agency Actions Regarding Financial Incentives or Other Actions

Today's management standards are designed to protect human health and environmental risk from ground pathway damages with minimum effect on existing used oil recycling flows and markets. As such they provide minimum interference with used oil markets and thus are inherently neutral with respect to future incentive programs. Since the Agency believes they do not measurably redirect flows, today's rules do not preempt or compete with objectives or goals of incentives currently under study to improve recycling. Basically today's rules provide uniform standards to be met by used oil handlers in terms of storage and tracking. They do not compete with, preclude, or bias future Agency or other initiatives to expand recycling nor are the costs of today's rules large enough to affect the efficiency of such future programs.

The Agency believes that today's management standards are compatible with any future program designed to increase (or redirect) recycling since they do not in themselves introduce any arbitrary or unnecessary imbalances between or among recycling technologies or end-used used-oil-derived product markets.

XI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96–345), requires Federal agencies to consider "small entities" throughout the regulatory process. Section 603 of the RFA requires an initial screening analysis to be performed to determine whether a substantial number of small entities will be significantly affected by the regulation. If so, regulatory alternatives which eliminate or mitigate the impacts must be considered.

Based on employment or sales, the vast majority of all used oil generators, collectors and processors are small businesses; blenders of virgin and used oil fuel, re-refiners, and burners are less likely to be small businesses. Overall, the economic analysis indicates that impacts are not significant for over 99 percent of the generators and for all of the other facility types affected, with the possible exception of some minor processors and some fuel oil dealers that currently blend used oil fuel with virgin oil fuel. Only a small fraction of

the farm section (about 2.5 percent), including only large commercial farms, will be subject to today's rule as a result of the small farm generator exemption.

A very small fraction (less than 0.2 percent) of small business used oil generators may face incremental costs of approximately $1,300 per year to cleanup a 250 gallon spill. This annual cost would only be incremental if the facility would not have cleaned up this spill without these new requirements to address release to the environment. We believe this is not an unreasonable cost burden for a very small fraction of small businesses, especially given the potential environmental damage of a spill of this size. Approximately 90 percent of generators would incur cost of less than $1 per year for labels for tanks and drums.

For the remaining sectors, only some minor processors and some fuel blenders/fuel oil dealers would incur significant costs. Approximately 30 percent of minor processors in the high-cost scenario would face incremental compliance costs of 2.2 cents per gallon. This cost increase may be sufficient to put the facility at a competitive disadvantage with other used oil processors. These minor processors might not be able to pass these costs back to customers since other firms that had already invested in these measures would incur lower costs. If the facility were already a marginal operation with poor credit, it might be forced to close.

Similarly, some small business fuel oil dealers that blend used oil fuel with virgin oil fuel might incur cost as high as 2.2 cents per gallon of used oil. Since the used oil is blended with virgin fuel, the cost impact per gallon of final product would be substantially less (only 0.2 cents per gallon of finished product assuming a typical blending rate of 10 percent used oil). Furthermore, these blenders may have other, low cost option for avoiding compliance costs such as refusing to accept off-specification oil from used oil suppliers, or simply discontinuing blending used oil at all.

In general, although a large population of small businesses will be subject to various provisions of this rule, only an extremely small fraction of these businesses will incur substantial costs. Therefore the Agency certifies that the final rule will not have significant economic impacts on substantial numbers of small businesses or entities.

XII. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* When approved, or if not approved by the effective date of this rule, EPA will publish a technical amendment to that effect in the **Federal Register**. An information Collection Request document has been prepared by EPA [ICR No. 1286.03] and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street, SW.

Public reporting burden for this collection of information varies by sector. The public reporting burden for used oil transporters averages from 18 to 27 minutes annually per respondent. For used oil processing and re-refining facilities, the reporting burden averages from 48 minutes to 25 hours annually per respondent, and for burners of off-specification fuel, the reporting burden averages as 9 minutes annually per respondent. The type of information required includes, time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460; and to the Office of Management and Budget, Washington, DC, 20503, marked "Attention: Desk Officer for EPA."

List of Subjects

40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous waste.

40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 266

Energy, Hazardous waste, Petroleum, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 279

Petroleum, Recycling, Reporting and recordkeeping requirements, Used oil.

Dated: August 11, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, 40 CFR chapter I is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921-6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

2. Section 260.10 is amended by adding a definition for "Used Oil", in alphabetical order to read as follows:

§ 260.10 Definitions.

* * * * *

Used oil means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use in contaminated by physical or chemical impurities.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

4. Section 261.3(a)(2) is amended by adding paragraph [v] to read as follows:

§ 261.3 Definition of Hazardous Waste.

(a) * * *

(2) * * *

(v) *Rebuttable presumption for used oil.* Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, Third Edition, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of part 261 of this chapter). EPA Publication SW-846, Third Edition, is available for the cost of $110.00 from the Government Printing Office, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250-7954, 202-783-3238 (document number 955-001-00000-1).

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking

oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

* * * * *

§ 261.5 [Amended]

5. Section 261.5(j) is amended by revising "subpart E of part 266" to read "subpart G of part 279".

§ 261.6 [Amended]

6. Section 261.6 is amended by removing paragraph (a)(2)(iii), and redesignating paragraphs (a)(2) (iv) and (v) as paragraphs (a)(2) (iii) and (iv).

7. Section 261.6 is amended by removing paragraph (a)(3) (iii), and redesignating paragraphs (a)(3) (iv) through (a)(3)(viii) as paragraphs (a)(3)(iii) through (a)(3)(vii).

8. Section 261.6 is amended by adding paragraph (a) (4) to read as follows:

§ 261.6 Requirements for recyclable materials.

(a) * * *

(4) Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of parts 260 through 268 of this chapter, but is regulated under part 279 of this chapter. Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes, but is not limited to, oil which is re-refined, reclaimed, burned for energy recovery, or reprocessed.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

9. The authority citation for part 266 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3014 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6934).

Subpart E—[Removed]

10. Subpart E of part 266 is removed and reserved.

11. Section 266.100 is amended by revising paragraph (b)(1) to read as follows:

§ 266.100 Applicability.

* * * * *

(b) * * *

(1) Used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in subpart C of part 261 of this chapter. Such used oil is subject to regulation under part 279 of this chapter;

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

12. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

Subpart A—Requirements for Final Authorization

13. Section 271.1(a) is amended by revising paragraph (a) to read as follows:

§ 271.1 Purpose and Scope.

(a) This subpart specifies the procedures EPA will follow in approving, revising, and withdrawing approval of State programs and the requirements State programs must meet to be approved by the Administrator under sections 3006(b), (f) and (h) of RCRA.

* * * * *

14. Subpart A of part 271 is amended by adding § 271.26 to read as follows:

§ 271.26 Requirements for used oil management.

The State shall have standards for used oil management which are equivalent to 40 CFR part 279. These standards shall include:

(a) Standards for used oil generators which are equivalent to those under subpart C of part 279 of this chapter;

(b) Standards for used oil collection centers and aggregation points which are equivalent to those under subpart D of part 279 of this chapter;

(c) Standards for used oil transporters and transfer facilities which are equivalent to those under subpart E of part 279 of this chapter;

(d) Standards for used oil processors and re-refiners which are equivalent to those under subpart F of part 279 of this chapter;

(e) Standards for used oil burners who burn off-specification used oil for energy recovery which are equivalent to those under subpart G of part 279 of this chapter;

(f) Standards for used oil fuel marketers which are equivalent to those under subpart H of part 279 of this chapter; and

(g) Standards for use as a dust suppressant and disposal of used oil which are equivalent to those under subpart I of part 279 of this chapter. A State may petition (e.g., as part of its authorization petition submitted to EPA under § 271.5 EPA to allow the use of used oil (that is not mixed with hazardous waste and does not exhibit a characteristic other than ignitability) as a dust suppressant. The State must show that it has a program in place to prevent the use of used oil/hazardous waste mixtures or used oil exhibiting a characteristic other than ignitability as a dust suppressant. In addition, such programs must minimize the impacts of use as a dust suppressant on the environment.

15. Title 40 of the Code of Federal Regulations is amended by adding part 279 to read as follows:

PART 279—STANDARDS FOR THE MANAGEMENT OF USED OIL

Subpart A—Definitions

Sec.
279.1 Definitions.

Subpart B—Applicability

279.10 Applicability.
279.11 Used oil specifications.
279.12 Prohibitions.

Subpart C—Standards for Used Oil Generators

279.20 Applicability.
279.21 Hazardous waste mixing.
279.22 Used oil storage.
279.23 On-site burning in space heaters.
279.24 Off-site shipments.

Subpart D—Standards for Used Oil Collection Centers and Aggregation Points

279.30 Do-it-yourselfer used oil collection centers.
279.31 Used oil collection centers.
279.32 Used oil aggregate points owned by the generator.

Subpart E—Standards for Used Oil Transporter and Transfer Facilities

279.40 Applicability.
279.41 Restrictions on transporters who are not also processors or re-refiners.
279.42 Notification.
279.43 Used oil transportation.
279.44 Rebuttable presumption for used oil.
279.45 Used oil storage at transfer facilities.
279.46 Tracking.
279.47 Management of residues.

Subpart F—Standards for Used Oil Processors and Re-Refiners

279.50 Applicability.
279.51 Notification.
279.52 General facility standards.
279.53 Rebuttable presumption for used oil.

Authority: Sections 1006, 2002(a), 3001 through 3007, 3010, 3014, and 7004 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, and 6974); and Sections 101(37) and 114(c) of CERCLA (42 U.S.C. 9601(37) and 9614(c)).

Subpart A—Definitions

§ 279.1 Definitions.

Terms that are defined in §§ 260.10, 261.1, and 280.12 of this chapter have the same meanings when used in this part.

Aboveground tank means a tank used to store or process used oil that is not an underground storage tank as defined in § 280.12 of this chapter.

Container means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

Do-it-yourselfer used oil collection center means any site or facility that accepts/aggregates and stores used oil collected only from household do-it-yourselfers.

Existing tank means a tank that is used for the storage or processing of used oil and that is in operation, or for which installation has commenced on or prior to the effective date of the authorized used oil program for the State in which the tank is located. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin installation of the tank and if either (1) A continuous on-site installation program has begun, or

(2) The owner or operator has entered into contractual obligations—which cannot be canceled or modified without substantial loss—for installation of the tank to be completed within a reasonable time.

Household "do-it-yourselfer" used oil means oil that is derived from households, such as used oil generated by individuals who generate used oil through the maintenance of their personal vehicles.

Household "do-it-yourselfer" used oil generator means an individual who generates household "do-it-yourselfer" used oil.

New tank means a tank that will be used to store or process used oil and for which installation has commenced after the effective date of the authorized used oil program for the State in which the tank is located.

Processing means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived product. Processing includes, but is not limited to: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining.

Re-refining distillation bottoms means the heavy fraction produced by vacuum distillation of filtered and dehydrated used oil. The composition of still bottoms varies with column operation and feedstock.

Tank means any stationary device, designed to contain an accumulation of used oil which is constructed primarily of non-earthen materials, (e.g., wood, concrete, steel, plastic) which provides structural support.

Used oil means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use if contaminated by physical or chemical impurities.

Used oil aggregation point means any site or facility that accepts, aggregates, and/or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of no more than 55 gallons. Used oil aggregation points may also accept used oil from household do-it-yourselfers.

Used oil burner means a facility where used oil not meeting the specification requirements in § 279.11 is burned for energy recovery in devices identified in § 279.61(a).

Used oil collection center means any site or facility that is registered/licensed/permitted/recognized by a state/county/municipal government to manage used oil and accepts/aggregates and stores used oil collected from used oil generators regulated under subpart C of this part who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of § 279.24. Used oil collection centers may also accept used oil from household do-it-yourselfers.

Used oil fuel marketer means any person who conducts either of the following activities:

(1) Directs a shipment of off-specification used oil from their facility to a used oil burner; or

(2) First claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in § 279.11 of this part.

Used oil generator means any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

Used oil processor/re-refiner means a facility that processes used oil.

Used oil transfer facility means any transportation related facility including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours during the normal course of transportation and not longer than 35 days. Transfer facilities that store used oil for more than 35 days are subject to regulation under subpart F of this part.

Used oil transporter means any person who transports used oil, any person who collects used oil from more than one generator and transports the collected oil, and owners and operators of used oil transfer facilities. Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation but, with the following exception, may not process used oil. Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation (e.g., settling and water separation), but that are not designed to produce (or make more amenable for production of) used oil derived products or used oil fuel.

Subpart B—Applicability

§ 279.10 Applicability.

This section identifies those materials which are subject to regulation as used oil under this part. This section also identifies some materials that are not subject to regulation as used oil under this part, and indicates whether these materials may be subject to regulation as hazardous waste under parts 260 through 266, 268, 270, and 124 of this chapter.

(a) *Used oil.* EPA presumes that used oil is to be recycled unless a used oil handler disposes of used oil, or sends used oil for disposal. Except as provided in § 279.11, the regulations of this part apply to used oil, and to materials identified in this section as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in subpart C of part 261 of this chapter.

(b) *Mixtures of used oil and hazardous waste*—(1) *Listed hazardous waste.* (i) Mixtures of used oil and hazardous waste that is listed in subpart D of part 261 of this chapter are subject to regulation as hazardous waste under parts 260 through 266, 268, 270, and 124 of this chapter, rather than as used oil under this part.

(ii) *Rebuttable presumption for used oil.* Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW–846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of part 261 of this chapter). EPA Publication SW–846, Third Edition, is available for the cost of $110.00 from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954, (202) 783–3238 (document number 955–001–00000–1).

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in § 279.24(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(2) *Characteristic hazardous waste.* Mixtures of used oil and hazardous waste that exhibits a hazardous waste characteristic identified in subpart C of part 261 of this chapter are subject to:

(i) Except as provided in paragraph (b)(2)(iii) of this section, regulation as hazardous waste under parts 260 through 266, 268, 270, and 124 of this chapter rather than as used oil under this part, if the resultant mixture exhibits any characteristics of hazardous waste identified in subpart C of part 261 of this chapter; or

(ii) Regulation as used oil under this part, if the resultant mixture does not exhibit any characteristics of hazardous waste identified under subpart C of part 261 of this chapter.

(iii) Regulation as used oil under this part, if the mixture is of used oil and a waste which is hazardous solely because if exhibits the characteristic of ignitability and is not listed in subpart D of part 261 of this chapter (e.g., mineral spirits), provided that the mixture does not exhibit the characteristic of ignitability under § 261.21 of this chapter.

(3) *Conditionally exempt small quantity generator hazardous waste.* Mixtures of used oil and conditionally exempt small quantity generator hazardous waste regulated under § 261.5 of this chapter are subject to regulation as used oil under this part.

(c) *Mixtures of used oil with non-hazardous solid wastes.* Mixtures of used oil and non-hazardous solid waste are subject to regulation as used oil under this part.

(d) *Mixtures of used oil with products.* (1) Except as provided in paragraph (d)(2) of this section, mixtures of used oil and fuels or other products are subject to regulation as used oil under this part.

(2) Mixtures of used oil and diesel fuel mixed on-site by the generator of the used oil for use in the generator's own vehicles are not subject to this part once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of subpart C of this part.

(e) *Materials derived from used oil.* (1) Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal (e.g., re-refined lubricants) are:

(i) Not used oil and thus are not subject to this part, and

(ii) Not solid wastes and are thus not subject to the hazardous waste regulations of parts 260 through 266, 268, 270, and 124 of this chapter as provided in § 261.3(c)(2)(i) of this chapter.

(2) Materials produced from used oil that are burned for energy recovery (e.g., used oil fuels) are subject to regulation as used oil under this part.

(3) Except as provided in paragraph (e)(4) of this section, materials derived from used oil that are disposed of or used in a manner constituting disposal are:

(i) Not used oil and thus are not subject to this Part, and

(ii) Are solid wastes and thus are subject to the hazardous waste regulations of parts 260 through 266, 268, 270, and 124 of this chapter if the materials are identified as hazardous waste.

(4) Re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are:

(i) Not subject to this part at this time, and

(ii) Not subject to the hazardous waste regulations of parts 260 through 266, 268, 270, and 124 of this chapter at this time.

(f) *Wastewater.* Wastewater, the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act (including wastewaters at facilities which have eliminated the discharge of wastewater), contaminated with *de minimis* quantities of used oil are not subject to the requirements of this part. For purposes of this paragraph, *"de minimis"* quantities of used oils are defined as small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception will not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

(g) *Used oil introduced into crude oil or natural gas pipelines.* Used oil that is placed directly into a crude oil or natural gas pipeline is subject to the management standards of this part only prior to the point of introduction to the pipeline. Once the used oil is introduced to the pipeline, the material is exempt from the requirements of this part.

(h) *Used oil on vessels.* Used oil produced on vessels from normal shipboard operations is not subject to this part until it is transported ashore.

(i) *PCB contaminated used oil.* PCB-containing used oil regulated under part 761 of this chapter is exempt from regulation under this part.

§ 279.11 Used oil specifications.

Used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment is subject to regulation under this part unless it is shown not to exceed any of the allowable levels of the constituents and properties in the specification shown in Table 1. Once used oil that is to be burned for energy recovery has

been shown not to exceed any specification and the person making that showing complies with §§ 279.72, 279.73, and 279.74(b), the used oil is no longer subject to this part.

TABLE 1—USED OIL NOT EXCEEDING ANY SPECIFICATION LEVEL IS NOT SUBJECT TO THIS PART WHEN BURNED FOR ENERGY RECOVERY [1]

Constituent/property	Allowable level
Arsenic	5 ppm maximum.
Cadmium	2 ppm maximum.
Chromium	10 ppm maximum.
Lead	100 ppm maximum.
Flash point	100 °F minimum.
Total halogens	4,000 ppm maximum.[2]

[1] The specification does not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste (see § 279.10(b)).

[2] Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under § 279.10(b)(1). Such used oil is subject to subpart H of part 266 of this chapter rather than this part when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

§ 279.12 Prohibitions.

(a) *Surface impoundment prohibition.* Used oil shall not be managed in surface impoundments or waste piles unless the units are subject to regulation under parts 264 or 265 of this chapter.

(b) *Use as a dust suppressant.* The use of used oil as a dust suppressant is prohibited, except when such activity takes place in one of the states listed in § 279.82(c).

(c) *Burning in particular units.* Off-specification used oil fuel may be burned for energy recovery in only the following devices:

(1) Industrial furnaces identified in § 260.10 of this chapter;

(2) Boilers, as defined in § 260.10 of this chapter, that are identified as follows:

(i) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes;

(ii) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale; or

(iii) Used oil-fired space heaters provided that the burner meets the provisions of § 279.23.

Subpart C—Standards for Used Oil Generators

§ 279.20 Applicability.

(a) *General.* Except as provided in paragraphs (a)(1) through (a)(4) of this section, this subpart applies to all used oil generators. A used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

(1) *Household "do-it-yourselfer" used oil generators.* Household "do-it-yourselfer" used oil generators are not subject to regulation under this part.

(2) *Vessels.* Vessels at sea or at port are not subject to this subpart. For purposes of this subpart, used oil produced on vessels from normal shipboard operations is considered to be generated at the time it is transported ashore. The owner or operator of the vessel and the person(s) removing or accepting used oil from the vessel are co-generators of the used oil and are both responsible for managing the waste in compliance with this subpart once the used oil is transported ashore. The co-genenerators may decide among them which party will fulfill the requirements of this subpart.

(3) *Diesel fuel.* Mixtures of used oil and diesel fuel mixed by the generator of the used oil for use in the generator's own vehicles are not subject to this part once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil fuel is subject to the requirements of this subpart.

(4) *Farmers.* Farmers who generate an average of 25 gallons per month or less of used oil from vehicles or machinery used on the farm in a calendar year are not subject to the requirements of this part.

(b) *Other applicable provisions.* Used oil generators who conduct the following activities are subject to the requirements of other applicable provisions of this part as indicated in paragraphs (b)(1) through (5) of this section:

(1) Generators who transport used oil, except under the self-transport provisions of § 279.24 (a) and (b), must also comply with subpart E of this part.

(2) Generators who process or re-refine used oil must also comply with subpart F of this part.

(3) Generators who burn off-specification used oil for energy recovery, except under the on-site space heater provisions of § 279.23, must also comply with subpart G of this part.

(4) Generators who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in § 279.11 must also comply with subpart H of this part.

(5) Generators who dispose of used oil, including the use of used oil as a dust suppressant, must also comply with subpart I of this part.

§ 279.21 Hazardous waste mixing.

(a) Generators shall not mix hazardous waste with used oil except as provided in § 279.10(b)(2) (ii) and (iii).

(b) The rebuttable presumption for used oil of § 279.10(b)(1)(ii) applies to used oil managed by generators. Under the rebuttable presumption for used oil of § 279.10(b)(1)(ii), used oil containing greater than 1,000 ppm total halogens is presumed to be a hazardous waste and thus must be managed as hazardous waste and not as used oil unless the presumption is rebutted. However, the rebuttable presumption does not apply to certain metalworking oils/fluids and certain used oils removed from refrigeration units.

§ 279.22 Used oil storage.

As specified in § 279.10(f), wastewaters containing "de minimis" quantities of used oil are not subject to the requirements of this part, including the prohibition on storage in units other than tanks or containers. Used oil generators are subject to all applicable Spill Prevention, Control and Countermeasures (40 CFR part 112) in addition to the requirements of this Subpart. Used oil generators are also subject to the Underground Storage Tank (40 CFR part 280) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this subpart.

(a) *Storage units.* Used oil generators shall not store used oil in units other than tanks, containers, or units subject to regulation under parts 264 or 265 of this chapter.

(b) *Condition of units.* Containers and aboveground tanks used to store used oil at generator facilities must be:

(1) In good condition (no severe rusting, apparent structural defects or deterioration); and

(2) Not leaking (no visible leaks).

(c) *Labels.* (1) Containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at generator facilities must be labeled or marked clearly with the words "Used Oil."

(d) *Response to releases.* Upon detection of a release of used oil to the environment not subject to the requirements of part 280, subpart F of this chapter which has occurred after the effective date of the authorized used oil program for the State in which the

release is located, a generator must perform the following cleanup steps:

(1) Stop the release;

(2) Contain the released used oil;

(3) Clean up and manage properly the released used oil and other materials; and

(4) If necessary to prevent future releases, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

§ 279.23 On-site burning in space heaters.

(a) Generators may burn used oil in used oil-fired space heaters provided that:

(1) The heater burns only used oil that the owner or operator generates or used oil received from household do-it-yourself used oil generators;

(2) The heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour; and

(3) The combustion gases from the heater are vented to the ambient air.

(b) (Reserved)

§ 279.24 Off-site shipments.

Except as provided in paragraphs (a) through (c) of this section, generators must ensure that their used oil is transported only by transporters who have obtained EPA identification numbers.

(a) *Self-transportation of small amounts to approved collection centers.* Generators may transport, without an EPA identification number, used oil that is generated at the generator's site and used oil collected from household do-it-yourselfers to a used oil collection center provided that:

(1) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;

(2) The generator transports no more than 55 gallons of used oil at any time; and

(3) The generator transports the used oil to a used oil collection center that is registered, licensed, permitted, or recognized by a state/county/municipal government to manage used oil.

(b) *Self-transportation of small amounts to aggregation points owned by the generator.* Generators may transport, without an EPA identification number, used oil that is generated at the generator's site to an aggregation point provided that:

(1) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;

(2) The generator transports no more than 55 gallons of used oil at any time; and

(3) The generator transports the used oil to an aggregation point that is owned and/or operated by the same generator.

(c) *Tolling arrangements.* Used oil generators may arrange for used oil to be transported by a transporter without an EPA identification number if the used oil is reclaimed under a contractual agreement pursuant to which reclaimed oil is returned by the processor/re-refiner to the generator for use as a lubricant, cutting oil, or coolant. The contract (known as a "tolling arrangement") must indicate:

(1) The type of used oil and the frequency of shipments;

(2) That the vehicle used to transport the used oil to the processing/re-refining facility and to deliver recycled used oil back to the generator is owned and operated by the used oil processor/re-refiner; and

(3) That reclaimed oil will be returned to the generator.

Subpart D—Standards for Used Oil Collection Centers and Aggregation Points

§ 279.30 Do-it-yourselfer used oil collection centers.

(a) *Applicability.* This section applies to owners or operators of all do-it-yourselfer (DIY) used oil collection centers. A DIY used oil collection center is any site or facility that accepts/aggregates and stores used oil collected only from household do-it-yourselfers.

(b) *DIY used oil collection center requirements.* Owners or operators of all DIY used oil collection centers must comply with the generator standards in subpart C of this part.

§ 279.31 Used oil collection centers.

(a) *Applicability.* This section applies to owners or operators of used oil collection centers. A used oil collection center is any site or facility that accepts/aggregates and stores used oil collected from used oil generators regulated under subpart C of this part who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of § 279.24(a). Used oil collection centers may also accept used oil from household do-it-yourselfers.

(b) *Used oil collection center requirements.* Owners or operators of all used oil collection centers must:

(1) Comply with the generator standards in subpart C of this part; and

(2) Be registered/licensed/permitted/recognized by a state/county/municipal government to manage used oil.

§ 279.32 Used oil aggregation points owned by the generator.

(a) *Applicability.* This section applies to owners or operators of all used oil aggregation points. A used oil aggregation point is any site or facility that accepts, aggregates, and/or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of no more than 55 gallons under the provisions of § 279.24(b). Used oil aggregation points may also accept used oil from household do-it-yourselfers.

(b) *Used oil aggregation point requirements.* Owners or operators of all used oil aggregation points must comply with the generator standards in subpart C of this part.

Subpart E—Standards for Used Oil Transporter and Transfer Facilities

§ 279.40 Applicability.

(a) *General.* Except as provided in paragraphs (a)(1) through (a)(4) of this section, this subpart applies to all used oil transporters. Used oil transporters are persons who transport used oil, persons who collect used oil from more than one generator and transport the collected oil, and owners and operators of used oil transfer facilities.

(1) This subpart does not apply to on-site transportation.

(2) This subpart does not apply to generators who transport shipments of used oil totalling 55 gallons or less from the generator to a used oil collection center as specified in § 279.24(a).

(3) This subpart does not apply to generators who transport shipments of used oil totalling 55 gallons or less from the generator to a used oil aggregation point owned or operated by the same generator as specified in § 279.24(b).

(4) This subpart does not apply to transportation of used oil generated by household do-it-yourselfers from the initial generator to a regulated used oil generator, collection center, aggregation point, processor/re-refiner, or burner subject to the requirements of this part. Except as provided in paragraphs (a)(1) through (a)(3) of this section, this subpart does, however, apply to transportation of collected household do-it-yourselfer used oil from regulated used oil generators, collection centers, aggregation points, or other facilities where household do-it-yourselfer used oil is collected.

(b) *Imports and exports.* Transporters who import used oil from abroad or export used oil outside of the United

States are subject to the requirements of this subpart from the time the used oil enters and until the time it exits the United States.

(c) *Trucks used to transport hazardous waste.* Unless trucks previously used to transport hazardous waste are emptied as described in § 261.7 of this chapter prior to transporting used oil, the used oil is considered to have been mixed with the hazardous waste and must be managed as hazardous waste unless, under the provisions of § 279.10(b), the hazardous waste/used oil mixture is determined not to be hazardous waste.

(d) *Other applicable provisions.* Used oil transporters who conduct the following activities are also subject to other applicable provisions of this part as indicated in paragraphs (d)(1) through (5) of this section:

(1) Transporters who generate used oil must also comply with subpart C of this part;

(2) Transporters who process or re-refine used oil, except as provided in § 279.41, must also comply with subpart F of this part;

(3) Transporters who burn off-specification used oil for energy recovery must also comply with subpart G of this part;

(4) Transporters who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in § 279.11 must also comply with subpart H of this partuel Marketers of this part; and

(5) Transporters who dispose of used oil, including the use of used oil as a dust suppressant, must also comply with subpart I of this part.

§ 279.41 Restrictions on transporters who are not also processors or re-refiners.

(a) Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation. However, except as provided in paragraph (b) of this section, used oil transporters may not process used oil unless they also comply with the requirements for processors/re-refiners in subpart F of this part.

(b) Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation (e.g., settling and water separation), but that are not designed to produce (or make more amenable for production of) used oil derived products unless they also comply with the processor/re-refiner requirements in subpart F of this part.

§ 279.42 Notification.

(a) *Identification numbers.* Used oil transporters who have not previously complied with the notification requirements of RCRA section 3010 must comply with these requirements and obtain an EPA identification number.

(b) *Mechanics of notification.* A used oil transporter who has not received an EPA identification number may obtain one by notifying the Regional Administrator of their used oil activity by submitting either:

(1) A completed EPA Form 8700-12 (To obtain EPA Form 8700-12 call RCRA/Superfund Hotline at 1-800-424-9346 or 703-920-9810); or

(2) A letter requesting an EPA identification number.

Call RCRA/Superfund Hotline to determine where to send a letter requesting an EPA identification number. The letter should include the following information:

(i) Transporter company name;

(ii) Owner of the transporter company;

(iii) Mailing address for the transporter;

(iv) Name and telephone number for the transporter point of contact;

(v) Type of transport activity (i.e., transport only, transport and transfer facility, transfer facility only);

(vi) Location of all transfer facilities at which used oil is stored;

(vii) Name and telephone number for a contact at each transfer facility.

§ 279.43 Used oil transportation.

(a) *Deliveries.* A used oil transporter must deliver all used oil received to:

(1) Another used oil transporter, provided that the transporter has obtained an EPA identification number;

(2) A used oil processing/re-refining facility who has obtained an EPA identification number;

(3) An off-specification used oil burner facility who has obtained an EPA identification number; or

(4) An on-specification used oil burner facility.

(b) *Shipping.* Used oil transporters must comply with all applicable packaging, labeling, and placarding requirements of the U.S. Department of Transportation under 49 CFR parts 173, 178 and 179. Used oil that meets the definition of combustible liquid (flash point below 200 °F but at or greater than 100 °F) or flammable liquid (flash point below 100 °F) is subject to Department of Transportation Hazardous Materials Regulations at 49 CFR Parts 100 through 177.

(c) *Used oil discharges.* (1) In the event of a discharge of used oil during transportation, the transporter must take appropriate immediate action to protect human health and the environment (e.g., notify local authorities, dike the discharge area).

(2) If a discharge of used oil occurs during transportation and an official (State or local government or a Federal Agency) acting within the scope of official responsibilities determines that immediate removal of the used oil is necessary to protect human health or the environment, that official may authorize the removal of the used oil by transporters who do not have EPA identification numbers.

(3) An air, rail, highway, or water transporter who has discharged used oil must:

(i) Give notice, if required by 49 CFR 171.15 to the National Response Center (800-424-8802 or 202-426-2675); and

(ii) Report in writing as required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, DC 20590.

(4) A water transporter who has discharged used oil must give notice as required by 33 CFR 153.203.

(5) A transporter must clean up any used oil discharged that occurs during transportation or take such action as may be required or approved by federal, state, or local officials so that the used oil discharge no longer presents a hazard to human health or the environment.

§ 279.44 Rebuttable presumption for used oil.

(a) To ensure that used oil is not a hazardous waste under the rebuttable presumption of § 279.10(b)(1)(ii), the used oil transporter must determine whether the total halogen content of used oil being transporter or stored at a transfer facility is above or below 1,000 ppm.

(b) The transporter must make this determination by:

(1) Testing the used oil; or

(2) Applying knowledge of the halogen content of the used oil in light of the materials or processes used.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents

listed in Appendix VIII of part 261 of this chapter). EPA Publication SW–846, Third Edition, is available for the cost of $110.00 from the Government Printing Office, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954. (202) 783–3238 (document number 955–001–00000–1).

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in § 279.24(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(2) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units if the CFC are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(d) *Record retention.* Records of analyses conducted or information used to comply with paragraphs (a), (b), and (c) of this section must be maintained by the transporter for at least 3 years.

§ 279.45 Used oil storage at transfer facilities.

As specified in § 279.10(f), wastewaters containing "de minimis" quantities of used oil are not subject to the requirements of this part, including the prohibition on storage in units other than tanks or containers. Used oil transporters are subject to all applicable Spill Prevention, Control and Countermeasures (40 CFR part 112) in addition to the requirements of this subpart. Used oil generators are also subject to the Underground Storage Tank (40 CFR part 280) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this subpart.

(a) *Applicability.* This section applies to used oil transfer facilities. Used oil transfer facilities are transportation related facilities including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours during the normal course of transportation and not longer than 35 days. Transfer facilities that store used oil for more than 35 days are subject to regulation under subpart F of this chapter.

(b) *Storage units.* Owners or operators of used oil transfer facilities may not store used oil in units other than tanks, containers, or units subject to regulation under parts 264 or 265 of this chapter.

(c) *Condition of units.* Containers and aboveground tanks used to store used oil at transfer facilities must be:

(1) In good condition (no severe rusting, apparent structural defects or deterioration); and

(2) Not leaking (no visible leaks).

(d) *Secondary containment for containers.* Containers used to store used oil at transfer facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dikes, berms, or retaining walls.

(2) The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(e) *Secondary containment for existing aboveground tanks.* Existing aboveground tanks used to store used oil at transfer facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or

(iii) An equivalent secondary containment system.

(2) The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(f) *Secondary containment for new aboveground tanks.* New aboveground tanks used to store used oil at transfer facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall; or

(iii) An equivalent secondary containment system.

(2) The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(g) *Labels.* (1) Containers and aboveground tanks used to store used oil at transfer facilities must be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at transfer facilities must be labeled or marked clearly with the words "Used Oil."

(h) *Response to releases.* Upon detection of a release of used oil to the environment not subject to the requirements of part 280 subpart F which has occurred after the effective date of the authorized used oil program for the State in which the release is located, the owner/operator of a transfer facility must perform the following cleanup steps:

(1) Stop the release;

(2) Contain the release used oil;

(3) Clean up and manage properly the released used oil and other materials; and

(4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

§ 279.46 Tracking.

(a) *Acceptance.* Used oil transporters must keep a record of each used oil shipment accepted for transport. Records for each shipment must include:

(1) The name and address of the generator, transporter, or processor/re-refiner who provided the used oil for transport;

(2) The EPA identification number (if applicable) of the generator, transporter, or processor/re-refiner who provided the used oil for transport;

(3) The quantity of used oil accepted;

(4) The date of acceptance; and

(5) The signature, dated upon receipt of the used oil, of a representative of the generator, transporter, or processor/re-refiner who provided the used oil for transport.

(b) *Deliveries.* Used oil transporters must keep a record of each shipment of used oil that is delivered to another used oil transporter, or to a used oil burner, processor/re-refiner, or disposal facility. Records of each delivery must include:

(1) The name and address of the receiving facility or transporter;

(2) The EPA identification number of the receiving facility or transporter;

(3) The quantity of used oil delivered;

(4) The date of delivery;

(5) The signature, dated upon receipt of the used oil, of a representative of the receiving facility or transporter.

(c) *Exports of used oil.* Used oil transporters must maintain the records described in paragraphs (b)(1) through (b)(4) of this section for each shipment of used oil exported to any foreign country.

(d) *Record retention.* The records described in paragraphs (a), (b), and (c) of this section must be maintained for at least three years.

§ 279.47 Management of residues.

Transporters who generate residues from the storage or transport of used oil must manage the residues as specified in § 279.10(e).

Subpart F—Standards for Used Oil Processors and Re-Refiners

§ 279.50 Applicability.

(a) The requirements of this subpart apply to owners and operators of facilities that process used oil. Processing means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived products. Processing includes, but is not limited to: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining. The requirements of this subpart do not apply to:

(1) Transporters that conduct incidental processing operations that occur during the normal course of transportation as provided in § 279.41; or

(2) Burners that conduct incidental processing operations that occur during the normal course of used oil management prior to burning as provided in § 279.61(b).

(b) *Other applicable provisions.* Used oil processors/re-refiners who conduct the following activities are also subject to the requirements of other applicable provisions of this part as indicated in paragraphs (b)(1) through (b)(5) of this section.

(1) Processors/re-refiners who generate used oil must also comply with subpart C of this part;

(2) Processors/re-refiners who transport used oil must also comply with subpart E of this part;

(3) Except as provided in paragraphs (b)(3)(i) and (b)(3)(ii) of this section, processors/re-refiners who burn off-specification used oil for energy recovery must also comply with subpart G of this part. Processor/re-refiners burning used oil for energy recovery under the following conditions are not subject to subpart G of this part:

(i) The used oil is burned in an on-site space heater that meets the requirements of § 279.23; or

(ii) The used oil is burned for purposes of processing used oil, which is considered burning incidentally to used oil processing;

(4) Processors/re-refiners who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in § 279.11 must also comply with subpart H of this part; and

(5) Processors/re-refiners who dispose of used oil, including the use of used oil as a dust suppressant, also must comply with subpart I of this part.

§ 279.51 Notification.

(a) *Identification numbers.* Used oil processors and re-refiners who have not previously complied with the notification requirements of RCRA section 3010 must comply with these requirements and obtain an EPA identification number.

(b) *Mechanics of notification.* A used oil processor or re-refiner who has not received an EPA identification number may obtain one by notifying the Regional Administrator of their used oil activity by submitting either:

(1) A completed EPA Form 8700–12 (To obtain EPA Form 8700–12 call RCRA/Superfund Hotline at 1–800–424–9346 or 703–920–9810); or

(2) A letter requesting an EPA identification number.

Call RCRA/Superfund Hotline to determine where to send a letter requesting an EPA identification number. The letter should include the following information:

(i) Processor or re-refiner company name;

(ii) Owner of the processor or re-refiner company;

(iii) Mailing address for the processor or re-refiner;

(iv) Name and telephone number for the processor or re-refiner point of contact;

(v) Type of used oil activity (i.e., process only, process and re-refine);

(vi) Location of the processor or re-refiner facility.

§ 279.52 General facility standards.

(a) *Preparedness and prevention.* Owners and operators of used oil processors and re-refiners facilities must comply with the following requirements:

(1) *Maintenance and operation of facility.* Facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of used oil to air, soil, or surface water which could threaten human health or the environment.

(2) *Required equipment.* All facilities must be equipped with the following, unless none of the hazards posed by used oil handled at the facility could require a particular kind of equipment specified in paragraphs (a)(2)(i) through (iv) of this section:

(i) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

(ii) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

(iii) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment and decontamination equipment; and

(iv) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(3) *Testing and maintenance of equipment.* All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

(4) *Access to communications or alarm system.* (i) Whenever used oil is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required in paragraph (a)(2) of this section.

(ii) If there is ever just one employee on the premises while the facility is operating, the employee must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required in paragraph (a)(2) of this section.

(5) *Required aisle space.* The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency,

unless aisle space is not needed for any of these purposes.

(6) *Arrangements with local authorities.* (i) The owner or operator must attempt to make the following arrangements, as appropriate for the type of used oil handled at the facility and the potential need for the services of these organizations:

(A) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of used oil handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

(B) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(C) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and

(D) Arrangements to familiarize local hospitals with the properties of used oil handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(ii) Where State or local authorities decline to enter into such arrangements, the owner or operator must document the refusal in the operating record.

(b) *Contingency plan and emergency procedures.* Owners and operators of used oil processors and re-refiners facilities must comply with the following requirements:

(1) *Purpose and implementation of contingency plan.* (i) Each owner or operator must have a contingency plan for the facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of used oil to air, soil, or surface water.

(ii) The provisions of the plan must be carried out immediately whenever there is a fire, explosion, or release or used oil which could threaten human health or the environment.

(2) *Content of contingency plan.* (i) The contingency plan must describe the actions facility personnel must take to comply with paragraphs (b) (1) and (6) of this section in response to fires, explosions, or any unplanned sudden or non-sudden release of used oil to air, soil, or surface water at the facility.

(ii) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with part 112 of this chapter, or part 1510 of chapter V of this title, or some other emergency or contingency plan, the owner or operator need only amend that plan to incorporate used oil management provisions that are sufficient to comply with the requirements of this part.

(iii) The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to paragraph (a)(6) of this section.

(iv) The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see paragraph (b)(5) of this section), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.

(v) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(vi) The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of used oil or fires).

(3) *Copies of contingency plan.* A copy of the contingency plan and all revisions to the plan must be:

(i) Maintained at the facility; and

(ii) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

(4) *Amendment of contingency plan.* The contingency plan must be reviewed, and immediately amended, if necessary, whenever:

(i) Applicable regulations are revised;

(ii) The plan fails in an emergency;

(iii) The facility changes—in its design, construction, operation, maintenance, or other circumstances—in a way that materially increases the potential for fires, explosions, or releases of used oil, or changes the response necessary in an emergency;

(iv) The list of emergency coordinators changes; or

(v) The list of emergency equipment changes.

(5) *Emergency coordinator.* At all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristic of used oil handled, the location of all records within the facility, and facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

Guidance: The emergency coordinator's responsibilities are more fully spelled out in paragraph (b)(6) of this section. Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of used oil handled by the facility, and type and complexity of the facility.

(6) *Emergency procedures.* (i) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or the designee when the emergency coordinator is on call) must immediately:

(A) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(B) Notify appropriate State or local agencies with designated response roles if their help is needed.

(ii) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and a real extent of any released materials. He may do this by observation or review of facility records of manifests and, if necessary, by chemical analysts.

(iii) Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water of chemical agents used to control fire and heat-induced explosions).

(iv) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he must report his findings as follows:

(A) If his assessment indicated that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He must be available to help appropriate officials decide whether local areas should be evacuated; and

(B) He must immediately notify either the government official designated as the on-scene coordinator for the geographical area (in the applicable regional contingency plan under part 1510 of this title), or the National Response Center (using their 24-hour toll free number 800/424–8802). The report must include:

(*1*) Name and telephone number of reporter;

(*2*) Name and address of facility;

(*3*) Time and type of incident (e.g., release, fire);

(*4*) Name and quantity of material(s) involved, to the extent known;

(*5*) The extent of injuries, if any; and

(*6*) The possible hazards to human health, or the environment, outside the facility.

(v) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other used oil or hazardous waste at the facility. These measures must include, where applicable, stopping processes and operation, collecting and containing released used oil, and removing or isolating containers.

(vi) If the facility stops operation in response to a fire, explosion, or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(vii) Immediately after an emergency, the emergency coordinator must provide for recycling, storing, or disposing of recovered used oil, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

(viii) The emergency coordinator must ensure that, in the affected area(s) of the facility:

(A) No waste or used oil that may be incompatible with the released material is recycled, treated, stored, or disposed of until cleanup procedures are completed; and

(B) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(C) The owner or operator must notify the Regional Administrator, and appropriate State and local authorities that the facility is in compliance with paragraph (h) of this section before operations are resumed in the affected area(s) of the facility.

(ix) The owner or operator must note in the operating record the time, date and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he must submit a written report on the incident to the Regional Administrator. The report must include:

(A) Name, address, and telephone number of the owner or operator;

(B) Name, address, and telephone number of the facility;

(C) Date, time, and type of incident (e.g., fire, explosion);

(D) Name and quantity of material(s) involved;

(E) The extent of injuries, if any;

(F) An assessment of actual or potential hazards to human health or the environment, where this is applicable;

(G) Estimated quantity and disposition of recovered material that resulted from the incident.

§ 279.53 Rebuttable presumption for used oil.

(a) To ensure that used oil managed at a processing/re-refining facility is not hazardous waste under the rebuttable presumption of § 279.10(b)(1)(ii), the owner or operator of a used oil processing/re-refining facility must determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.

(b) The owner or operator must make this determination by:

(1) Testing the used oil; or

(2) Applying knowledge of the halogen content of the used oil in light of the materials or processes used.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW–846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of part 261 of this chapter). EPA Publication SW–846, Third Edition, is available for the cost of $110.00 from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh PA 15250–7954, (202) 783–3238 (document number 955–001–00000–1).

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(2) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

§ 279.54 Used oil management.

As specified in § 279.10(f), wastewaters containing "de minimis" quantities of used oil are not subject to the requirements of this part, including the prohibition on storage in units other than tanks or containers. Used oil processor/re-refiners are subject to all applicable Spill Prevention, Control and Countermeasures (40 CFR part 112) in addition to the requirements of this subpart. Used oil generators are also subject to the Underground Storage Tank (40 CFR part 280) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this subpart.

(a) *Management units.* Used oil processors/re-refiners may not store or process used oil in units other than tanks, containers, or units subject to regulation under part 264 or 265 of this chapter.

(b) *Condition of units.* Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities must be:

(1) In good condition (no severe rusting, apparent structural defects or deterioration); and

(2) Not leaking (no visible leaks).

(c) *Secondary containment for containers.* Containers used to store or process used oil at processing and re-refining facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall.

(2) The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(d) *Secondary containment for existing aboveground tanks.* Existing aboveground tanks used to store or process used oil at processing and re-refining facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or

(iii) An equivalent secondary containment system.

(2) The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(e) *Secondary containment for new aboveground tanks.* New aboveground tanks used to store or process used oil at processing and re-refining facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall; or

(iii) An equivalent secondary containment system.

(2) The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(f) *Labels.* (1) Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities must be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at processing and re-refining facilities must be labeled or marked clearly with the words "Used Oil."

(g) *Response to releases.* Upon detection of a release of used oil to the environment not subject to the requirements of part 280, subpart F of this chapter which has occurred after the effective date of the authorized used oil program for the State in which the release is located, an owner/operator must perform the following cleanup steps:

(1) Stop the release;

(2) Contain the released used oil;

(3) Clean up and mange properly the released used oil and other materials; and

(4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

(h) *Closure.*—(1) *Aboveground tanks.* Owners and operators who store or process used oil in aboveground tanks must comply with the following requirements:

(i) At closure of a tank system, the owner or operator must remove or decontaminate used oil residues in tanks, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under this chapter.

(ii) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in paragraph (h)(1)(i) of this section, then the owner or operator must close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to hazardous waste landfills (§ 265.310 of this chapter).

(2) *Containers.* Owners and operators who store used oil in containers must comply with the following requirements:

(i) At closure, containers holding used oils or residues of used oil must be removed from the site;

(ii) The owner or operator must remove or decontaminate used oil residues, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under part 261 of this chapter.

§ 279.55 Analysis plan.

Owners or operators of used oil processing and re-refining facilities must develop and follow a written analysis plan describing the procedures that will be used to comply with the analysis requirements of § 279.53 and, if applicable, § 279.72. The owner or operator must keep the plan at the facility.

(a) *Rebuttable presumption for used oil in § 279.53.* At at minimum, the plan must specify the following:

(1) Whether sample analyses or knowledge of the halogen content of the used oil will be used to make this determination.

(2) If sample analyses are used to make this determination:

(i) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(A) One of the sampling methods in appendix I of part 261 of this chapter; or

(B) A method shown to be equivalent under §§ 260.20 and 260.21 of this chapter;

(ii) The frequency of sampling to be performed, and whether the analysis will be performed on-site or off-site; and

(iii) The methods used to analyze used oil for the parameters specified in § 279.53; and

(3) The type of information that will be used to determine the halogen content of the used oil.

(b) *On-specification used oil fuel in § 279.72.* At a minimum, the plan must specify the following if § 279.72 is applicable:

(1) Whether sample analyses or other information will be used to make this determination;

(2) If sample analyses are used to make this determination:

(i) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(A) One of the sampling methods in appendix I of part 261 of this chapter; or

(B) A method shown to be equivalent under § 260.20 and 260.21 of this chapter;

(ii) Whether used oil will be sampled and analyzed prior to or after any processing/re-refining;

(iii) The frequency of sampling to be performed, and whether the analysis will be performed on-site or off-site; and

(iv) The methods used to analyze used oil for the parameters specified in § 279.72; and

(3) The type of information that will be used to make the on-specification used oil fuel determination.

§ 279.56 Tracking.

(a) *Acceptance.* Used oil processors/re-refiners must keep a record of each used oil shipment accepted for processing/re-refining. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment must include the following information:

(1) The name and address of the transporter who delivered the used oil to the processor/re-refiner;

(2) The name and address of the generator or processor/re-refining from

whom the used oil was sent for processing/re-refining;

(3) The EPA identification number of the transporter who delivered the used oil to the processor/re-refiner;

(4) The EPA identification number (if applicable) of the generator or processor/re-refiner from whom the used oil was sent for processing/re-refining;

(5) The quantity of used oil accepted; and

(6) The date of acceptance.

(b) *Delivery.* Used oil processor/re-refiners must keep a record of each shipment of used oil that is shipped to a used oil burner, processor/ re-refiner, or disposal facility. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment must include the following information:

(1) The name and address of the transporter who delivers the used oil to the burner, processor/re-refiner or disposal facility;

(2) The name and address of the burner, processor/re-refiner or disposal facility who will receive the used oil;

(3) The EPA identification number of the transporter who delivers the used oil to the burner, processor/re-refiner or disposal facility;

(4) The EPA identification number of the burner, processor/re-refiner, or disposal facility who will receive the used oil;

(5) The quantity of used oil shipped; and

(6) The date of shipment.

(c) *Record retention.* The records described in paragraphs (a) and (b) of this section must be maintained for at least three years.

§ 279.57 Operating record and reporting.

(a) *Operating record.* (1) The owner or operator must keep a written operating record at the facility.

(2) The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility;

(i) Records and results of used oil analyses performed as described in the analysis plan required under § 279.55; and

(ii) Summary reports and details of all incidents that require implementation of the contingency plan an specified in § 279.52(b).

(b) *Reporting.* A used oil processor/re-refiner must report to the Regional Administrator, in the form of a letter, on a biennial basis (by March 1 of each even numbered year), the following information concerning used oil activities during the previous calendar year;

(1) The EPA identification number, name, and address of the processor/re-refiner;

(2) The calendar year covered by the report; and

(3) The quantities of used oil accepted for processing/re-refining and the manner in which the used oil is processed/re-refined, including the specific processes employed.

§ 279.58 Off-site shipments of used oil.

Used oil processors/re-refiners who initiate shipments of used oil off-site must ship the used oil using a used oil transporter who has obtained an EPA identification number.

§ 279.59 Management of residues.

Owners and operators who generate residues from the storage, processing, or re-fining of used oil must manage the residues as specified in § 279.10(e).

Subpart G—Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery

§ 279.60 Applicability.

(a) *General.* The requirements of this subpart apply to used oil burners except as specified in paragraphs (a)(1) and (a)(2) of this section. A used oil burner is a facility where used oil not meeting the specification requirements in § 279.11 is burned for energy recovery in devices identified in § 279.61(a). Facilities burning used oil for energy recovery under the following conditions are not subject to this Subpart:

(1) The used oil is burned by the generator in an on-site space heater under the provisions of § 279.23; or

(2) The used oil is burned by a processor/re-refiner for purposes of processing used oil, which is considered burning incidentally to used oil processing.

(b) *Other applicable provisions.* Used oil burners who conduct the following activities are also subject to the requirements of other applicable provisions of this part as indicated below.

(1) Burners who generate used oil must also comply this subpart C of this part;

(2) Burners who transport used oil must also comply with subpart E of this part;

(3) Except as provided in § 279.61(b), burners who process or re-refine used oil must also comply with subpart F of this part;

(4) Burners who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in § 279.11 must also comply with subpart H of this part; and

(5) Burners who dispose of used oil, including the use of used oil as a dust suppressant, must comply with subpart I of this part.

(c) *Specification fuel.* This subpart does not apply to persons burning used oil that meets the used oil fuel specification of § 279.11, provided that the burner complies with the requirements of subpart H of this part.

§ 279.61 Restrictions on burning.

(a) Off-specification used oil fuel may be burned for energy recovery in only the following devices:

(1) Industrial furnaces identified in § 260.10 of this chapter;

(2) Boilers, as defined in § 260.10 of this chapter, that are identified as follows:

(i) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes;

(ii) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale; or

(iii) Used oil-fired space heaters provided that the burner meets the provisions of § 279.23; or

(3) Hazardous waste incinerators subject to regulation under subpart O of parts 264 or 265 of this chapter.

(b)(1) With the following exception, used oil burners may not process used oil unless they also comply with the requirements of subpart F of this part.

(2) Used oil burners may aggregate off-specification used oil with virgin oil or on-specification used oil for purposes of burning, but may not aggregate for purposes of producing on-specification used oil.

§ 279.62 Notification

(a) *Identification numbers.* Used oil burners who have not previously complied with the notification requirements of RCRA section 3010 must comply with these requirements and obtain an EPA identification number.

(b) *Mechanics of notification.* A used oil burner who has not received an EPA identification number may obtain one by notifying the Regional Administrator of their used oil activity by submitting either:

(1) A completed EPA Form 8700–12 (To obtain EPA Form 8700–12 call RCRA/Superfund Hotline at 1–800–424–9346 or 703–920–9810); or

(2) A letter requesting an EPA identification number. Call the RCRA/Superfund Hotline to determine where to send a letter requesting an EPA identification number. The letter should include the following information:

(i) Burner company name;

(ii) Owner of the burner company;

(iii) Mailing address for the burner;

(iv) Name and telephone number for the burner point of contact;

(v) Type of used oil activity; and

(vi) Location of the burner facility.

§ 279.63 Rebuttable presumption for used oil.

(a) To ensure that used oil managed at a used oil burner facility is not hazardous waste under the rebuttable presumption of § 279.10(b)(1)(ii), a used oil burner must determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.

(b) The used oil burner must determine if the used oil contains above or below 1,000 ppm total halogens by:

(1) Testing the used oil;

(2) Applying knowledge of the halogen content of the used oil in light of the materials or processes used; or

(3) If the used oil has been received from a processor/refiner subject to regulation under subpart F of this part, using information provided by the processor/re-refiner.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste/ because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW–846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of part 261 of this chapter). EPA Publication SW–846, Third Edition, is available for the cost of $110.00 from the Government Printing Office, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954. 202–783–3238 (document number 955–001–00000–1).

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in § 279.24(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(2) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(d) *Record retention.* Records of analyses conducted or information used to comply with paragraphs (a), (b), and (c) of this section must be maintained by the burner for at least 3 years.

§ 279.64 Used oil storage.

As specified in § 279.10(f), wastewaters containing "de minimis" quantities of used oil are not subject to the requirements of this Part, including the prohibition on storage in units other than tanks or containers. Used oil burners are subject to all applicable Spill Prevention, Control and Countermeasures (40 CFR part 112) in addition to the requirements of this subpart. Used oil generators are also subject to the Underground Storage Tank (40 CFR part 280) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this subpart.

(a) *Storage units.* Used oil burners may not store used oil in units other than tanks, containers, or units subject to regulation under parts 264 or 265 of this chapter.

(b) *Condition of units.* Containers and aboveground tanks used to store oil at burner facilities must be:

(1) In good condition (no severe rusting, apparent structural defects or deterioration); and

(2) Not leaking (no visible leaks).

(c) *Secondary containment for containers.* Containers used to store used oil at burner facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall.

(2) The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(d) *Secondary containment for existing aboveground tanks.* Existing aboveground tanks used to store used oil at burner facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or

(iii) An equivalent secondary containment system.

(2) The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(e) *Secondary containment for existing aboveground tanks.* New aboveground tanks used to store used oil at burner facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall; or

(iii) An equivalent secondary containment system.

(2) The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(f) *Labels.* (1) Containers and aboveground tanks used to store used oil at burner facilities must be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at burner facilities must be labeled or marked clearly with the words "Used Oil."

(g) *Response to releases.* Upon detection of a release of used oil to the environment not subject to the requirements of part 280 subpart F which has occurred after the effective date of the authorized used oil program for the State in which the release is located, a burner must perform the following cleanup steps:

(1) Stop the release;

(2) Contain the released used oil;

(3) Clean up and manage properly the released used oil and other materials; and

(4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

§ 279.65 Tracking.

(a) *Acceptance.* Used oil burners must keep a record of each used oil shipment accepted for burning. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment must include the following information:

(1) The name and address of the transporter who delivered the used oil to the burner;

(2) The name and address of the generator or processor/re-refiner from whom the used oil was sent to the burner;

(3) The EPA identification number of the transporter who delivered the used oil to the burner;

(4) The EPA identification number (if applicable) of the generator or processor/re-refiner from whom the used oil was sent to the burner;

(5) The quantity of used oil accepted; and

(6) The date of acceptance.

(b) *Record retention.* The records described in paragraph (a) of this section must be maintained for at least three years.

§ 279.66 Notices.

(a) *Certification.* Before a burner accepts the first shipment of off-specification used oil fuel from a generator, transporter, or processor/re-refiner, the burner must provide to the generator, transporter, or processor/re-refiner a one-time written and signed notice certifying that:

(1) The burner has notified EPA stating the location and general description of his used oil management activities; and

(2) The burner will burn the used oil only in an industrial furnace or boiler identified in § 279.61(a).

(b) *Certification retention.* The certification described in paragraph (a) of this section must be maintained for three years from the date the burner last receives shipment of off-specification used oil from that generator, transporter, or processor/re-refiner.

§ 279.67 Management of residues.

Burners who generate residues from the storage or burning of used oil must manage the residues as specified in § 279.10(e).

Subpart H–Standards for Used Oil Fuel Marketers

§ 279.70 Applicability.

(a) Any person who conducts either of the following activities is subject to the requirements of this section:

(1) Directs a shipment of off-specification used oil from their facility to a used oil burner; or

(2) First claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in § 279.11.

(b) The following persons are not marketers subject to this subpart:

(1) Used oil generators, and transporters who transport used oil received only from generators, unless the generator or transporter directs a shipment of off-specification used oil from their facility to a used oil burner. However, processors/re-refiners who burn some used oil fuel for purposes of processing are considered to be burning incidentally to processing. Thus, generators and transporters who direct shipments of off-specification used oil to processor/re-refiners who incidently burn used oil are not marketers subject to this Subpart;

(2) Persons who direct shipments of on-specification used oil and who are not the first person to claim the oil meets the used oil fuel specifications of § 279.11.

(c) Any person subject to the requirements of this Subpart must also comply with one of the following:

(1) Subpart C of this part—Standards for Used Oil Generators;

(2) Subpart E of this part—Standards for Used Oil Transporters and Transfer Facilities;

(3) Subpart F of this part—Standards for Used Oil Processors and Re-refiners; or

(4) Subpart G of this part—Standards for Used Oil Burners who Burn Off-Specification Used Oil for Energy Recovery.

§ 279.71 Prohibitions.

A used oil fuel marketer may initiate a shipment of off-specification used oil only to a used oil burner who:

(a) Has an EPA identification number; and

(b) Burns the used oil in an industrial furnace or boiler identified in § 279.61(a).

§ 279.72 On-specification used oil fuel.

(a) *Analysis of used oil fuel.* A generator, transporter, processor/re-refiner, or burner may determine that used oil that is to be burned for energy recovery meets the fuel specifications of § 279.11 by performing analyses or obtaining copies of analyses or other information documenting that the used oil fuel meets the specifications. Such used oil that is to be burned for energy recovery is not subject to further regulation under this part.

(b) *Record retention.* A generator, transporter, processor/re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the specifications for used oil fuel under § 279.11, must keep copies of analyses of the used oil (or other information used to make the determination) for three years.

§ 279.73 Notification.

(a) A used oil fuel marketer subject to the requirements of this section who has not previously complied with the notification requirements of RCRA Section 3010 must comply with these requirements and obtain an EPA identification number.

(b) A marketer who has not received an EPA identification number may obtain one by notifying the Regional Administrator of their used oil activity by submitting either:

(1) A completed EPA Form 8700–12; or

(2) A letter requesting an EPA identification number. The letter should include the following information:

(i) Marketer company name;

(ii) Owner of the marketer;

(iii) Mailing address for the marketer;

(iv) Name and telephone number for the marketer point of contact; and

(v) Type of used oil activity (i.e., generator directing shipments of off-specification used oil to a burner).

§ 279.74 Tracking.

(a) *Off-specification used oil delivery.* Any used oil generator who directs a shipment of off-specification used oil to a burner must keep a record of each shipment of used oil to a used oil burner. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment must include the following information:

(1) The name and address of the transporter who delivers the used oil to the burner;

(2) The name and address of the burner who will receive the used oil;

(3) The EPA identification number of the transporter who delivers the used oil to the burner;

(4) The EPA identification number of the burner;

(5) The quantity of used oil shipped; and

(6) The date of shipment.

(b) *On-specification used oil delivery.* A generator, transporter, processor/re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the fuel specifications under § 279.11 must keep a record of each shipment of used oil to an on-specification used oil burner. Records for each shipment must include the following information:

(1) The name and address of the facility receiving the shipment;

(2) The quantity of used oil fuel delivered;

(3) The date of shipment or delivery; and

(4) A cross-reference to the record of used oil analysis or other information used to make the determination that the oil meets the specification as required under § 279.72(a).

(c) *Record retention.* The records described in paragraphs (a) and (b) of this section must be maintained for at least three years.

§ 279.75 Notices.

(a) *Certification.* Before a used oil generator, transporter, or processor/re-refiner directs the first shipment of off-specification used oil fuel to a burner, he must obtain a one-time written and signed notice from the burner certifying that:

(1) The burner has notified EPA stating the location and general description of used oil management activities; and

(2) The burner will burn the off-specification used oil only in an industrial furnace or boiler identified in § 279.61(a).

(b) *Certification retention.* The certification described in paragraph (a) of this section must be maintained for three years from the date the last shipment of off-specification used oil is shipped to the burner.

Subpart I—Standards for Use as a Dust Suppressant and Disposal of Used Oil

§ 279.80 Applicability.

The requirements of this subpart apply to all used oils that cannot be recycled and are therefore being disposed.

§ 279.81 Disposal.

(a) *Disposal of hazardous used oils.* Used oils that are identified as a hazardous waste and cannot be recycled in accordance with this part must be managed in accordance with the hazardous waste management requirements of parts 260 through 266, 268, 270 and 124 of this chapter.

(b) *Disposal of nonhazardous used oils.* Used oils that are not hazardous wastes and cannot be recycled under this part must be disposed in accordance with the requirements of parts 257 and 258 of this chapter.

§ 279.82 Use as a dust suppressant.

(a) The use of used oil as a dust suppressant is prohibited, except when such activity takes place in one of the states listed in paragraph (c) of this section.

(b) A State may petition (e.g., as part of its authorization petition submitted to EPA under § 271.5 of this chapter or by a separate submission) EPA to allow the use of used oil (that is not mixed with hazardous waste and does not exhibit a characteristic other than ignitability) as a dust suppressant. The State must show that it has a program in place to prevent the use of used oil/hazardous waste mixtures or used oil exhibiting a characteristic other than ignitability as a dust suppressant. In addition, such programs must minimize the impacts of use as a dust suppressant on the environment.

(c) *List of States.* [Reserved]

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Thursday
September 10, 1992

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 101
Model Rocket Operations; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 101

[Docket No. 26965; Notice No. 92-12]

RIN: 2120-AB75

Model Rocket Operations

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to reduce the restrictions on the operation of model rockets that use not more than 125 grams (4.4 ounces) of propellant; that are made of paper, wood, or breakable plastic; that contain no substantial metal parts; and that weigh not more than 1,500 grams (53 ounces). The FAA believes that this amendment will foster an important aeronautical education activity while retaining appropriate safety precautions.

DATES: Comments must be received on or before December 9, 1992.

ADDRESSES: Comments on the proposal may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. [26965], 800 Independence Avenue, SW., Washington, DC 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. White, Air Traffic Rules Branch, ATP-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting necessary written data, views, or arguments. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on the notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. [26965]." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered by the Administrator before taking further rulemaking action. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future notices should also request a copy of Advisory Circular No. 11-2A "Notice of Proposed Rulemaking Distribution System," which describes the application procedures.

Background

On September 12, 1984, the FAA announced in the **Federal Register** (49 FR 35789) a Regulatory Review Program for Part 101 of the Federal Aviation Regulations (FAR) and invited comments and recommendations as part of this review. Comments received during the Regulatory Review addressed the following areas of concern: (1) Balloon operations, including moored vs. tethered balloon requirements, lighting requirements and operations in the proximity of airports; and (2) model rocket operations. Comments on model rockets concerned proximity of operators to airports, increased gross weight, and propellant standards. Response to the announcement of the review program was very limited, except for those issues regarding the operation of model rockets. This notice addresses only those issues related to the operation of unmanned (model) rockets.

National Association of Rocketry

On May 24, 1985, the National Association of Rocketry (NAR), an affiliate of the National Aeronautic Association, representing thousands of model rocket consumers, and the Hobby Industry Association (HIA), representing the manufacturers of model rocket kits, motors, and accessories, petitioned the FAA to consider rulemaking action to amend FAR § 101.1, Applicability. The petitioners seek to raise the upper weight limit on excepted model rockets from 16 ounces to 1,500 grams (approximately 53 ounces) and the allowable propellant mass from 4 ounces to 125 grams (approximately 4.4 ounces). According to the petitioners, these changes are based on studies conducted by the NAR and are recommended to help keep model rocketry in the U.S. abreast of advancements made in this educational aerospace hobby/sport.

Section of the FAR Affected

Section 101.1, in pertinent part, establishes the applicability of part 101 to the operation of any unmanned rockets using more than 4 ounces of propellant or having a total weight of more than 16 ounces, including the propellant.

A summary of the petitioners' request was published in the **Federal Register** on March 19, 1986 (51 FR 9458) for public comment. The only comment received was from one of the petitioners, who supported the petition.

Supporting Information

The petitioner stated that from 1959 to 1962, when the current part 101 was being drafted, the NAR played a major role in suggesting the present limits on propellant and gross weight for exclusion from Part 101, Applicability. At that time, model rocketry was strictly an American hobby/sport. The Federation Aeronautical International first established its "Sporting Code for Space Models" in 1964. Considering the construction techniques, materials, and design principles of model rockets that existed in the 1959-1962 time period, the NAR considered 4 ounces of propellant and 16 ounces of gross weight to be the maximum value likely to be achieved in the model rocketry hobby in the foreseeable future. The FAA accepted these limits which formed the basis for the current FAR § 101.1.

The petitioner further stated that the state of the art in model rocketry has progressed to the point where larger, heavier, and more powerful model rockets are both feasible and safe due to improved propellants, materials, and safety procedures. NAR stated that it had conducted an intensive and inclusive study of potential safety hazards of model rockets having increased gross weights. The study was undertaken by a special committee of the NAR that was established in 1983 and staffed by model rocketeers, aeronautical engineers, National Aeronautics and Space Administration sounding rocket experts, rocket propellant specialists, doctors of

medicine, licensed pilots, and computer engineers. The study purports to validate the conclusion that no degradation of aviation safety will result from the proposed increase in propellant and rocket weights.

The study included an evaluation of the effects of crosswinds on the launching of model rockets. It concluded that heavier rockets would be less susceptible to tip-over or course derogation from wind than the lighter rockets.

The study also included an investigation regarding the potential of an incident between a 1,500-gram model rocket and an aircraft in flight. NAR's researchers assumed that any probable hazards to aircraft would fall in the following two areas: (1) Airframe penetration during high-speed powered flight of models; and (2) foreign object damage, similar to that posed by a bird, during the model's low-speed drifting return to the ground under a miniature parachute or other recovery device.

Potential for Damaging an Aircraft in Flight

The study concluded that the probability of a model rocket causing foreign object damage to an aircraft in flight during the model's slow descent to the ground, via a recovery device, depends on how much the model weighs, how high it flies, and how long it takes to return to the ground. The increase of allowable propellant, coupled with more powerful, modern model rocket motors when used with a very light rocket (less than one pound) could cause an increase in the maximum achievable altitude of only 20 percent (to 7,200 feet for a single-stage rocket and to 10,000 feet for a two-stage rocket). This could allow a model rocket to stay aloft under its recovery device for up to 10 minutes. The probability of an aircraft encountering such a rocket was estimated (by the NAR special committee) to be 1 in 48 million flights of these high performance model rockets. When a maximum of 125 grams of propellant is used with a 1,500-gram model rocket, the maximum achievable altitude is much less approximately 2,400 feet. In addition, impact with an aircraft during the upward powered flight of a 1,500-gram model rocket might cause airframe damage comparable to the impact of large hailstones.

The worst possible collision scenario that could occur would be during the model's slow descent phase, if it were to be ingested by a turbine engine. NAR noted that, since current regulations require aircraft turbine engines to remain controllable following ingestion of tire treads and 4-pound birds, turbine engines also should be able to continue operating after ingesting gravel or 1.5-pound birds. According to the petitioner, low density, non-metallic, high performance model rockets weighing up to 1,500 grams would not pose greater damage potential than these.

To confirm the results obtained by computer analyses, literature searches, statistical analyses, and historical data, the petitioner conducted actual flight tests at a site 5 miles north of an airport. Sixteen high-powered, high-weight model rockets were launched. All models were tracked using the FAA-approved two station altitude/azimuth theodolite system. Comparisons were made between high-powered model rockets weighing up to 1,500 grams with 125 grams of propellant, and those currently excluded from regulation by the FAR. These flight tests confirmed the other analyses and data; however, these tests did not include verification of the potential for the occurrence of an impact with an aircraft in flight or the resulting consequences of such an occurrence.

The final report of the NAR Committee was presented to the NAR Board of Trustees in February 1985. The board accepted the committee's report and the recommendation that NAR-permissible model rocket gross weights be increased to 1,500 grams and propellant weights to 125 grams. The report also was accepted to the Model Rocket Division of the HIA. The recommendations were forwarded to the National Fire Protection Association's (NFPA) committee on pyrotechnics, for their consideration in revising NFPA 1122 Code for Unmanned Rockets. This is a voluntary standard that is widely accepted by state legislatures and public safety officials having rulemaking powers.

FAA Analysis

The FAA has reviewed the NAR study as well as other pertinent data. The FAA also notes that the NAR estimates that there have been approximately 250,000 launches of model rockets since the inception of the sport and that the National Transportation Safety Board (NTSB) reports that there have been no midair collisions between model rockets and aircraft in flight. The FAA considers that it is to the public's benefit to foster interest in aeronautics and that model rocketry provides a valuable means for hobbyists to purse that interest. The FAA further believes that the educational value of this activity is enhanced by remaining abreast of the state of the art technology.

The FAA commissioned a study of its own to evaluate the potential for a hazard to aviation safety resulting from the operation of model rockets.

The March 1991 final report included an analysis of the likelihood for damage to an aircraft in flight if impacted by a model rocket, as well as a conclusion of the probability of such an occurrence. The researchers, the Galaxy Scientific Corporation, of Mays Landing, NJ, made the following conclusions:

- Model rockets have the capability to reach the theoretical speed of 600 knots and the altitude of 4,000 feet based on the calculations performed in the report.
- Searches of FAA and NTSB data bases from 1984 to 1989 indicate that the probability of collision between model rockets and aircraft is remote.
- The two most vulnerable types of aircraft are general aviation aircraft and rotorcraft, due to lower operational altitude and velocity and different structural design conditions.
- The results of structural analysis show that model rockets under present and proposed rules have the capability to damage aircraft, assuming that a collision occurs.
- Some operational limits for model rockets should be specified, (i.e., do not operate model rockets in controlled airspace or within 5 miles of the boundary of any airport). This notice would limit the operations of model rockets at least 5 nautical miles from the airports and further reduce the chance of collision between a model rocket and an aircraft.

The study, in its entirety, has been placed in the docket for public inspection.

Conclusions

The FAA must balance considerations of advancing the study of and interest in aeronautics resulting from model rocket activities with concern for the protection of aircraft in flight. The Agency also must balance the remote likelihood of a collision between a model rocket and an aircraft and the consequences of such an occurrence. The FAA has concluded that the outstanding safety record of model rocketry to date is due, in part, to the establishment and compliance with voluntary standards such as the NAR's Model Rocket Safety Code. That code provides, in part, for a launch safety officer to terminate activity when aircraft are observed entering the area where model rockets are being launched. The FAA also believes that if the size and mass of model rockets are increased, there is an increase in the potential for harm to an aircraft in flight should a collision occur. It is therefore essential to ensure that persons

operating larger model rockets observe such safety precautions. The FAA has determined that it is in the public interest to accommodate the advancement of model rocketry with regulations that also will provide an adequate level of assurance that such rockets will not jeopardize the safety of aircraft in flight.

The Proposal

The FAA proposes to add § 101.22 to part 101 for the FAR to allow the operation of model rockets with up to 125 grams (approximately 4.4 ounces) of propellant and a maximum gross weight of 1,500 grams (approximately 53 ounces), including propellant, as long as certain precautions are taken. As is now the case, model rocketeers still would be prohibited from launching rockets into, or through, clouds, from flying near aircraft in flight, or from being hazardous to people or property. The prohibition against operating such model rockets in controlled airspace, within 5 miles of an airport, within 1,500 feet of any non-participant, or between sunset and sunrise, however, will not apply provided the person operating the model rocket complies with the provisions of § 101.25, which the FAA is proposing to modify in this NPRM requiring that model rocketeers provide pertinent information about the operation to the nearest FAA Air Traffic Control (ATC) facility. The FAA has determined that organizations that previously were excluded from the requirements regarding spectator proximity or night operations have demonstrated a very effective safety record. The FAA believes that reestablishing the threshold at not more than 125 grams (approximately 4.4 ounces) of propellant and not more than 1500 grams (approximately 53 ounces) of total rocket weight, does not warrant spectator restraint or operational time prohibitions.

The FAA is proposing to make an editorial change to § 101.25 to clarify the intent of the existing language dealing with notification of an intended operation. The current language requires FAA notification "within 24 to 48 hours" of an intended operation. A literal interpretation of the requirement would allow a proponent to notify the FAA anytime preceding the actual time of the operation and up to 48 hours prior to the operation. Such interpretation is not the original intent of the requirement. The intent is for the FAA to receive notification at least 24 hours prior to the operation but no more than 48 hours prior to the operation. The 24-hour prior notification is the minimum necessary for the FAA and airport management, as appropriate, to advise pilots planning to operate in the area where unmanned rocket operations are planned. The maximum 48-hour notification is the optimum amount of time that a proponent would have finalized his/her intended operation. Therefore, the FAA believes it minimizes the revisions to advisories given to pilots concerning a planned unmanned rocket operation. Accordingly, the language in the rule would be changed to reflect the original intent of the rule.

Regulatory Evaluation Summary

Introduction

This section summarizes the full regulatory evaluation that provides more detailed estimates of the economic consequences of this regulatory action. This summary and the full evaluation quantify, to the extent practicable, anticipated benefits and estimated costs to the private sector, consumers, and Federal, State, and local governments.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society outweigh potential costs for each regulatory change. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is controversial or likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

The FAA has determined that this rule is not "major" as defined in the Executive Order; therefore, a full regulatory analysis, which includes the identification and evaluation of cost-reducing alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise document, termed a regulatory evaluation, that analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains a summary of the regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96-354) and an international trade impact assessment. If more economic information is desired than is contained in this summary, the reader is referred to the full regulatory evaluation contained in the docket.

Benefits

The proposed rule likely would provide benefits. The FAA has determined that the proposed regulations will accommodate the advancement of model rocketry and simultaneously provide an adequate level of assurance that such rockets will not jeopardize the safety of aircraft in flight.

Costs

The proposed rule for unmanned rockets consists of provisions that specify the requirements for operating certain model rockets (rockets using not more than 125 grams of propellant; made of paper, wood, or breakable plastic; containing no substantial metal parts, and weighing not more than 1,500 grams including propellant). The proposed rule is designed to accommodate the advancement of model rocketry with regulations that also will provide an adequate level of assurance so that such rockets will not jeopardize the safety of aircraft in flight.

The FAA estimates that the proposed changes in the NPRM would have no cost impact to users of model rockets. In fact, the proposed changes might produce a cost savings. The savings associated with these changes, however, are considered negligible and unquantifiable.

This provision may impose minor costs on the FAA. Persons operating model rockets would have to provide the information required in existing § 101.25 to the airport manager and to the FAA ATC facility that is nearest the place of the intended operation. The FAA would incur costs associated with receiving, recording, and evaluating the material that has been received. The FAA believes that these costs would be minor.

Conclusions

Based on the fact that there are little or no compliance costs coupled with the potential benefits, the FAA concludes that the proposed rule would be cost-beneficial.

International Trade Impact Analysis

The proposed amendments would apply to users of model rockets in the United States only. There would be no economic impact resulting from any of the proposed amendments and the FAA has determined that these regulations would not have an impact on international trade, if promulgated.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review

rules that may have "a significant cost impact on a substantial number of small entities."

With regard to this regulatory evaluation, there would be no cost associated with any of the proposed amendments. The FAA has determined that the proposed amendments contained in this NPRM would not have a significant economic impact on a substantial number of small entities.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 101

Aircraft, Kites, Moored balloons, Unmanned free balloons, Unmanned rockets.

The Proposed Amendment

In consideration of the foregoing, the FAA proposes to amend Part 101 of the Federal Aviation Regulations, as follows:

PART 101—[AMENDED]

1. The authority citation for part 101 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354, 1372, 1421, 1442, 1443, 1472, 1510, and 1522; E.O. 11514; 49 U.S.C. 106(g).

Subpart C—Unmanned Rockets

2. Section 101.22 is added to read as follows:

§ 101.22 Special provisions for large model rockets.

Persons operating model rockets that use not more than 125 grams of propellant; that are made of paper, wood, or breakable plastic; that contain no substantial metal parts, and that weigh not more than 1,500 grams, including the propellant, need not comply with subparagraphs 101.23 (b), (c), (g), and (h) provided:

(a) That person complies with all provisions of § 101.25; and

(b) The operation is not conducted within 5 nautical miles of an airport runway or other landing area unless the information required in § 101.25 is also provided to the manager of that airport.

3. Section 101.25 is amended by revising the introductory text and paragraphs (a), (b), (c), and (d) to read as follows:

§ 101.25 Notice requirements.

No person may operate an unmanned rocket unless that person gives the following information to the FAA ATC facility nearest to the place of intended operation no less than 24 hours prior to and no more than 48 hours prior to beginning the operation:

(a) The names and addresses of the operators, except when there are multiple participants at a single event, a single name may be designated for all operations in the event;

(b) The estimated number of rockets to be operated;

(c) The estimated size and the estimated weight of each rocket; and

(d) The estimated highest altitude or flight level to which each rocket will be operated.

* * * * *

Issued in Washington, DC, on September 2, 1992.

L. Lane Speck,

Director, Air Traffic, Rules and Procedures Service.

[FR Doc. 92-21718 Filed 9-9-92; 8:45 am]

BILLING CODE 4910-13-M

federal register

Thursday
September 10, 1992

Part V

Department of Labor

Office of Labor-Management Standards

29 CFR Part 403

Abbreviated Annual Financial Reports for Small Labor Organizations; Proposed Rule

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 403

RIN 1294-AA08

Abbreviated Annual Financial Reports for Small Labor Organizations

AGENCY: Office of Labor-Management Standards, Labor.

ACTION: Proposed rule.

SUMMARY: The Office of Labor-Management Standards (OLMS) is proposing an abbreviated labor organization financial report (Form LM-4) for small unions with annual receipts of less than $10,000. Section 201(b) of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), requires labor organizations to file annual financial reports with the Department of Labor. The proposed abbreviated financial reporting form, developed pursuant to the Secretary's authority in Section 208 of the LMRDA, will ease the reporting burden on small unions.

DATES: Interested parties may submit written comments on this proposal. All comments must be submitted by October 13, 1992.

ADDRESSES: Written comments should be submitted to Marshall J. Breger, Acting Assistant Secretary for Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., room S2203, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Marshall J. Breger, Acting Assistant Secretary for Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., room S2203, Washington, DC 20210, Telephone: (202) 523-9674.

SUPPLEMENTARY INFORMATION:

A. Background and Overview

Section 201(a) of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), requires each covered labor organization to, among other things, adopt a constitution and bylaws and file these documents and information on rates of dues and fees, as well as any subsequent changes in these items, with the Secretary of Labor. Section 201(b) of the LMRDA requires each covered labor organization to file annually a financial report signed by its president and treasurer or corresponding principal officers, disclosing its financial condition for the preceding fiscal year. The Secretary of Labor has delegated her authority under the LMRDA to the Assistant Secretary for Labor-Management Standards. See Secretary's Order No. 3-84 (49 FR 20578).

The requirements of section 201 apply to all labor organizations in the private sector including those representing employees under the provisions of the National Labor Relations Act, as amended, and the Railway Labor Act, as amended. Section 1209(b) of the Postal Reorganization Act made the LMRDA applicable to labor organizations representing employees of the U.S. Postal Service. Section 701 of the Civil Service Reform Act of 1978 (CSRA) and section 1017 of the Foreign Service Act of 1980 (FSA), as implemented by Department of Labor regulations at 29 CFR Parts 457-459, extended the LMRDA reporting requirements to labor organizations representing certain employees of the federal government.

Approximately 39,200 labor organizations are subject to the LMRDA, CSRA, and FSA and file reports with OLMS. Currently, labor organizations with total annual receipts of $100,000 or more must file the detailed Form LM-2 which has 14 supporting financial schedules. (Approximately 10,700 organizations now file Form LM-2.) Labor organizations with total annual receipts of less than $100,000 and not in trusteeship may file Form LM-3 which is shorter than the Form LM-2 and does not contain any supporting financial schedules. (Approximately 25,000 organizations now file Form LM-3.) Additionally, national organizations may file simplified reports on behalf of affiliated local labor organizations which have no assets, no liabilities, no receipts, and no disbursements and are not in trusteeship during the period covered by the report. (Approximately 3,500 organizations now have the simplified report filed on their behalf.)

On April 17, 1992, the Department published in the **Federal Register** (57 FR 14244) a notice of proposed rulemaking which would modify the existing Forms LM-2 and LM-3 in three significant respects. The proposed rule:

—Requires that reporting labor organizations disclose expenses on a functional basis when preparing Forms LM-2 or LM-3;
—Requires reporting labor organizations to utilize the accrual method of accounting when preparing Forms LM-2 or LM-3; and
—Raises the ceiling for filing the less complicated Form LM-3 to annual financial receipts of less than $200,000.

Section 208 of the LMRDA authorizes the Secretary to issue rules and regulations prescribing the form and publication of the annual financial report, and directs the Secretary to provide for an abbreviated report for labor organizations when she finds that by virtue of their size a detailed report would be unduly burdensome. The proposed Form LM-4 was developed pursuant to this authority.

B. Abbreviated Reports

The Department of Labor is proposing to issue an abbreviated annual financial report for labor organizations with less than $10,000 in annual receipts. Approximately 14,000 unions would be authorized to file the abbreviated Form LM-4 in addition to approximately 3,500 unions with no assets and no receipts which currently have reports filed on their behalf by the parent organizations.

Most of the officers of these small unions are rank and file members who work at their regular jobs and conduct union business on their own time in the evenings and on weekends. There are frequent changes of these officers who typically have minimal accounting or bookkeeping experience. Furthermore, due to limited resources, these unions cannot afford professional assistance for bookkeeping or reporting purposes. Therefore, the Department of Labor proposes the abbreviated financial report (Form LM-4) to ease the reporting burden for these small unions. The proposed Form LM-4 requires labor organizations to report summary financial information in the following five categories:

—Receipts
—Payments to officers and employees
—Other disbursements
—Assets
—Liabilities

In addition, the proposed Form LM-4 contains questions regarding:

—Changes to the organization's constitution and bylaws;
—Changes to the rates of dues or fees; and
—Loss or shortage of funds or property.

The Department of Labor believes that the proposed Form LM-4 will allow members to obtain adequate disclosure information concerning the financial conditions of their labor organizations, reduce the reporting burden for these small unions, and prevent an inordinate proportion of their income being used for mandated bookkeeping and reporting costs which would reduce the amount available for appropriate membership activities.

C. Related Comments

On April 17, 1992, the Department of Labor published a proposed rule in the **Federal Register** (57 FR 14244) to revise existing Labor Organization Annual Reports (Forms LM–2 and LM–3). That proposed rule also requested comments on the concept of an abbreviated financial report for unions with minimal reciepts and/or assets (less than $5,000 to $10,000). The Department received nine comments regarding the abbreviated financial report.

Four parent body labor organizations submitted comments supporting the abbreviated reports; three of these organizations suggested that the dollar level should be greater than $10,000. Two certified public accounting firms also expressed support for an abbreviated form. A former OLMS employee/consultant suggested that labor organizations with annual receipts of less than $10,000 be permitted to continue filing the current Form LM–3. One response indicated that an abbreviated report might be appropriate but suggested strict reporting requirements to include, among other things, functional reporting, and the inclusion of assets, receipts, and expenditures in the dollar threshold test to qualify to file an abbreviated report. Finally, another response suggested that the Department should more clearly define the proposal and stated that the simplification should not come at the expense of union members' access to revenue and expense information. The Department of Labor considered these comments in preparing the proposed Form LM–4 which will permit interested parties to comment in greater detail on the concept of an abbreviated report.

The April 17 proposed rule also requested specific comments on the proposal to require labor organizations to utilize the accrual method of accounting to complete the required LM–2 and LM–3 reports. A number of the comments received expressed opposition to this proposed requirement. Several recommended that the accrual method be optional for all unions and others recommended that the requirement for the accrual method should be based on some threshold of annual receipts. In light of these comments and the Department's desire to ease the reporting burden for small unions, the proposed Form LM–4 has been designed to be completed on the cash basis but labor organizations would have the option to complete the proposed Form LM–4 using the accrual basis of accounting. The Department of Labor is actively reviewing all of the comments received with respect to accrual reporting and other issues as they relate to the proposed Forms LM–2 and LM–3.

D. Regulatory Procedures

The Department of Labor has determined that this proposed rule is not a "major rule" under Executive Order 12291 in that it will not have an annual effect on the economy of $100 million or more, not cause a major increase in costs or prices, and not have an adverse effect on competition in the marketplace. Therefore, no regulatory impact analysis is required.

The Agency Head has certified that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act. The proposed rule would only apply to labor organizations and would decrease the reporting burden on labor organizations with annual receipts of less than $10,000. In accordance with the provisions of the Regulatory Flexibility Act, the Department of Labor has determined that the labor unions regulated pursuant to the statutory authority granted under the LMRDA do not constitute small entities. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

E. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1980, as amended, information collection requirements have been submitted to the Office of Management and Budget for approval. Send comments regarding these information collection requirements to Marshall J. Breger, Acting Assistant Secretary for Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., room S2203, Washington, DC 20210.

List of Subjects Affected in 29 CFR Part 403

Labor unions, reporting and recordkeeping requirements.

Text of Proposed Rule

In consideration of the foregoing, the Department of Labor, Office of Labor-Management Standards proposes that part 403 of title 29, Code of Federal Regulations, be amended as follows:

PART 403—LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

1. The authority citation for part 403 continues to read as follows:

Authority: Secs. 201, 208, 301, 73 Stat. 524, 529, 530; 29 U.S.C. 431, 438, 461; Secretary's Order No. 3–84 (49 FR 20578).

§ 403.4 [Amended]

2. Section 403.4 is amended by redesignating paragraph (a) as paragraph (a)(1) and adding a new paragraph (a)(2) as follows:

§ 403.4 Simplified annual reports for smaller labor organizations.

(a)(1) * * *

(2) If a labor organization, not in trusteeship, has gross annual receipts totaling less than $10,000 for its fiscal year, it may elect, subject to revocation of the privileges as provided in section 208 of the Act, to file the annual financial report called for in section 201(b) of the Act and § 403.3 of this part on United States Department of Labor Form LM–4 entitled "Labor Organization Annual Report" in accordance with the instructions accompanying such form and constituting a part thereof.

* * * * *

Signed in Washington, DC, this 4th day of September, 1992.

Marshall J. Breger,

Acting Assistant Secretary for Labor-Management Standards.

BILLING CODE 4510–86–M

U.S. Department of Labor
Office of Labor-Management Standards
Washington, DC 20210

Form approved
Office of Management and Budget

LABOR ORGANIZATION ANNUAL REPORT
FORM LM-4

FOR USE BY LABOR ORGANIZATIONS WITH LESS THAN $10,000 IN RECEIPTS

This report is mandatory under PL 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 USC 439 or 440.

READ THE INSTRUCTIONS CAREFULLY BEFORE PREPARING THIS REPORT. SUBMIT THIS REPORT IN DUPLICATE.

IMPORTANT

If label is here → please peel off top part and place in same box on next copy of form.

If label information is correct, leave items 4 through 8 blank.

If label information is incorrect, complete items 4 through 8.

1. FILE NUMBER

2. PERIOD COVERED — MO / DAY / YR
FROM
THROUGH

3. WHERE LOCATED OR CHARTERED TO OPERATE:
CITY _____ COUNTY _____ STATE _____

4. AFFILIATION OR ORGANIZATION NAME

5. DESIGNATION (Local, Lodge, etc.)

6. DESIGNATION NUMBER

7. UNIT NAME (if any)

8. MAILING ADDRESS:
(In care of) NAME OF PERSON
NUMBER AND STREET
CITY STATE ZIP CODE

9. During the reporting period, did your organization have any changes in its constitution or bylaws? *(If yes, attach a copy.)* ☐ Yes ☐ No

10. During the reporting period, did your organization change its rates of dues and fees? *(If yes, report the rates in Item 16.)* ☐ Yes ☐ No

11. Enter the total receipts of your organization during the reporting period. *(If $10,000 or more, your organization must file Form LM-2 or LM-3 instead of this form.)* $ _____

12. Disbursements made by your organization during the reporting period:
(a) Enter all payments to officers & employees *(salaries, lost time pay, allowances, expenses, etc.).* $ _____
(b) Enter all other disbursements *(per capita tax, loans made, payments for office supplies, etc.).* $ _____

13. Enter the total value of all your organization's assets at the end of the reporting period *(cash, bank accounts, investments, equipment, buildings, etc.).* $ _____

14. Enter the total liabilities (debts) of your organization at the end of the reporting period *(unpaid bills, loans owed, mortgages owed, etc.).* $ _____

15. During the reporting period, did your organization discover any loss or shortage of funds or property? *(If yes, provide details in Item 16.)* ☐ Yes ☐ No

16. ADDITIONAL INFORMATION *(If this is a terminal report, see Section X of the instructions.)*

Each of the undersigned, duly authorized officers of the above labor organization, declares, under the applicable penalties of law,* that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete.

17. SIGNED: _____ PRESIDENT *(If other title, cross out and write in correct title above. Explain in Item 16.)*
at: _____ on: _____
City State Date
( ) _____
Telephone Number

18. SIGNED: _____ TREASURER *(If other title, cross out and write in correct title above. Explain in Item 16.)*
at: _____ on: _____
City State Date
( ) _____
Telephone Number

*See Section VI on "penalties" in the instructions.

Form LM-4 (1992)

Instructions for Labor Organization Annual Report, Form LM–4

General Instructions

I. Who Must File—Every labor organization subject to the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), the Civil Service Reform Act (CSRA), or the Foreign Service Act (FSA) must file a financial report, Form LM–2, LM–3, or LM–4, each year with the Office of Labor-Management Standards (OLMS) of the U.S. Department of Labor. These laws cover labor organizations that represent employees in private industry, employees of the U.S. Postal Service, and most Federal government employees. Labor organizations that represent only State, and municipal government employees are not required to file. If you have a question about whether your organization is required to file, contact the nearest OLMS field office listed on the last page of these instructions.

II. What Form to File.—A labor organization subject to the LMRDA, CSRA, or FSA may file its annual report on Form LM–4 only if it meets the following two conditions:

—The labor organization had total annual receipts of less than $10,000 in the 12-month period covered by the report. The term "total annual receipts" includes all receipts and other funds handled by the labor organization regardless of source and without exclusions or deductions of any kind.

—The labor organization was not in trusteeship at the end of its reporting period.

If not eligible to use Form LM–4, your organization may report on Form LM–3 if it had less than $200,000 in annual receipts and was not in trusteeship at the end of its reporting period. Your organization must file Form LM–2 if it had $200,000 or more in annual receipts or was in trusteeship.

III. When to File—Form LM–4 must be filed within ninety (90) days after the end of your organization's fiscal year (a calendar year or other 12-month reporting period). The law does not authorize the U.S. Department of Labor to grant an extension of time for filing reports for any reason.

If your organization went out of existence during its fiscal year, a terminal report must be filed within thirty (30) days after the date it ceased to exist. See Section X of these instructions for information on filing a terminal report.

IV. Where to File—The original and one duplicate copy of Form LM–4 and any required attachments must be filed with the U.S. Department of Labor at the following address: U.S. Department of Labor, Office of Labor-Management Standards, 200 Constitution Avenue, NW, Washington, DC 20210.

If available, use the pre-addressed envelope enclosed with the report package to file Form LM–4.

V. Public Disclosure—The LMRDA requires that the U.S. Department of Labor make labor organization financial reports available for inspection by the public. Reports may be examined and copies purchased at the OLMS Public Disclosure Room at the above address or at the OLMS field office in whose jurisdiction the reporting organization is located. See the last page of these instructions for a list of field offices.

VI. Responsibilities of Officers and Penalties—The president and treasurer or the corresponding chief executive and financial officers required to sign Form LM–4 are personally responsible for its filing and accuracy. Under the LMRDA, officers are subject to criminal penalties for willful failure to file a required report and for false reporting. False reporting includes making any false statement or misrepresentation of a material fact while knowing it to be false, or for knowingly failing to disclose a material fact in a required report or in the information required to be contained in it or in any information required to be submitted with it. Under the CSRA and FSA and implementing regulations, false reporting and failure to report may result in administrative enforcement action and litigation. The officers responsible for signing Form LM–4 are also subject to criminal penalties for false reporting under section 1001 of Title 18 of the United States Code.

VII. Record Keeping—The officers required to file Form LM–4 are responsible for maintaining records which will provide in sufficient detail the information and data necessary to verify the accuracy and completeness of the report. Under the LMRDA, the records must be kept for at least five years after the date the report is filed. Any record necessary to verify, explain, or clarify the report must be retained, including, but not limited to, vouchers, worksheets, receipts, and applicable resolutions.

VIII. Labor Organizations Under Trusteeship—The law requires any labor organization which has assumed a trusteeship over a subordinate labor organization to file, on behalf of the subordinate labor organization, the trusteed organization's annual report. Reports filed for any organization under trusteeship must be on Form LM–2, which can be obtained from the nearest OLMS field office listed on the last page of these instructions.

IX. Completing Form LM–4

Number of Copies

Three blank copies of Form LM–4 are included in this report package. The original and one duplicate copy must be filed with OLMS. A third copy should be maintained in your organization's records.

Legibility

Entries on Form LM–4 should be typed or clearly printed in ink. Do not use a pencil.

Report Only Dollar Amounts

Report amounts in Items 11 through 14 in dollars only. Round cents to the nearest dollar.

Address Label

If this form was mailed to you with an address label, peel off the top label and place it in the corresponding box on the second copy of the form, so that address labels are affixed to the two copies being mailed to OLMS. Use the pre-printed labels even if the information on them is incorrect.

Cash or Accrual Accounting

Form LM–4 is designed for Items 11 through 14 to be completed on the cash basis of accounting. However, if your organization's records are maintained on the accrual basis of accounting, Items 11 through 14 may be completed on that basis. In the cash method of accounting, receipts are recorded when money is actually received and disbursements are recorded when money is actually paid out by your organization. In the accrual method, income is recorded when earned and expenses are recorded when incurred.

If Items 11 through 14 are completed on the accrual basis of accounting, enter the following statement in Item 16 (Additional Information): "This report was prepared on the accrual basis."

Items 1–16

1. File Number—Enter the 6-digit number which OLMS assigned to your organization. If this form was mailed to you with an address label, your file number is the 6-digit number on the first line of the label. If you do not have a label and you cannot obtain the number from prior reports filed by your organization, contact the nearest OLMS field office listed on the last page of these instructions to obtain your organization's file number.

2. Period Covered—Enter the beginning and ending dates of the period covered by this report. The report should never cover more than a 12-month period. For example, if your organization's 12-month fiscal year ends on December 31, enter these dates as "1/1/9__" and "12/31/9__." It would not be correct to enter January 1 of one year to January 1 of the next year.

3. Where Located or Chartered to Operate—Enter the city, county, and State where your organization is located or chartered to operate. If no single city is named in your charter or is authorized by your national or international labor organization, enter the city, county, and State in which your organization's main office, other than a private residence, is located. If your organization has no office, enter the city, county and State where most of the members work. This city, county, and State reported should generally remain the same from year to year and should not be changed on your organization's report because of a change in officers or the mailing address reported in Item 8.

Note: If you do not have an address label or the information on the label is incorrect, complete Items 4 through 8 below in their entirety. If the label information is correct, leave Items 4 through 8 blank.

4. Affiliation or Organization Name—Enter the name of the national or international labor organization which granted your organization a charter. If your organization has no such affiliation, enter the name of your organization as currently identified in your organization's constitution and bylaws or other organizational documents.

5. Designation—Enter the designation that specifically identifies your organization, for example: Local, Lodge, Branch, Joint Board, Joint Council, District Council, etc. If your

organization has no such designation, enter "None" or "Not Applicable."

6. Designation Number—Enter the number or other descriptive term, if any, by which your organization is known. If your organization has no such designation number, enter "None" or "Not Applicable."

7. Unit Name—Enter any additional name by which your organization is known, such as "Chicago Area Local."

8. Mailing Address—Enter the current address where mail will most surely and quickly reach your organization. Be sure to indicate the name of the person, if any, to whom such mail should be sent and include any building and room number.

9. Changes in Constitution or Bylaws—Check Item 9 "Yes" if your organization made any changes in its constitution or bylaws during the reporting period. If "Yes" is checked, attach a copy of the revised constitution and/or bylaws to both copies of the Form LM-4 that your organization files with OLMS. Check "No" if your organization had no changes in its constitution or bylaws.

10. Changes in Rates of Dues and Fees—Check Item 10 "Yes" if your organization changed its rates of dues and fees during the reporting period. If "Yes" is checked, report the rates of dues and fees in Item 16. Dues and fees include initiation fees charged to new members, fees (other than dues) from transferred members, fees for work permits, and regular dues or fees. Include only the dues and fees of regular members and not the dues and fees of members with special rates, such as apprentices, retirees, and unemployed members. Check "No" if your organization did not change its rates of dues and fees.

11. Receipts—Enter in Item 11 the total amount of all receipts of your organization during the reporting period including, for example, dues from members, fees, fines, assessments, interest received, dividends, rent, money from the sale of assets, and loans received by your organization. Enter "00" if your organization had no receipts during the reporting period.

Note: If your organization's annual receipts are $10,000 or more, your organization must report on Form LM-2 or Form LM-3 as explained in Section II of these instructions.

12. Disbursements

(a) Payments to Officers and Employee—Enter in Item 12(a) the total amount of all payments to officers and employees made by your organization during the reporting period.

The amount reported should include gross salaries (before tax withholdings and other payroll deductions); lost time pay; monthly, weekly, or daily allowances; and expenses for conducting official business of the organization including travel expenses. Enter "00" if your organization made no payments to officers or employees during the reporting period.

(b) Other Disbursements—Enter in Item 12(b) the total amount of all other disbursements made by your organization during the reporting period including, for example, per capita tax and any other fees or assessments which your organization paid to any other organization, payments for administrative expenses, loans made by your organization, and taxes paid. Do not include payments to officers and employees, which must be reported in Item 12(a). Enter "00" if your organization made no other disbursements during the reporting period.

Note: Section 503(a) of the LMRDA prohibits labor organizations from making direct or indirect loans to any officer or employee of the labor organization which results in a total indebtedness on the part of such officer or employer to the labor organization in excess of $2,000.

13. Assets—Enter in Item 13 the total value of all your organization's assets at the end of the reporting period including, for example, cash on hand and in banks, property, buildings, loans owed to your organization, investments, office furniture, automobiles, and anything else owned by your organization. Enter "00" if your organization had no assets at the end of the reporting period.

14. Liabilities—Enter in Item 14 the total amount of your organization's liabilities at the end of the reporting period including, for example, unpaid bills, loans owed, total amount of mortgages owed, and other debts of your organization. Enter "00" if your organization had no liabilities at the end of the reporting period.

15. Losses or Shortages—Check Item 15 "Yes" if any loss or shortage of funds or other property of your organization was discovered during the reporting period even if there has been repayment or an agreement to make restitution. If Item 15 is checked "Yes," describe the loss or shortage in detail in Item 16 including such information as the amount of the loss or shortage of funds or a description of the property that was lost, how it was lost, and to what extent, if any, there has been any recovery by means of restitution, surety bond, insurance, or other means. Check "No" if no losses or shortages were discovered.

Note: Section 502(a) of the LMRDA requires every officer or employee of a labor organization (whose property and annual financial receipts exceed $5,000 in value) who handles funds or other property of the organization to be bonded. The amount of the bond must be at least 10% of the value of the funds handled by the individual during the last reporting period. The bond must be obtained from a surety company approved by the Secretary of the Treasury. If you have any questions or need more information about bonding requirements, contact the nearest OLMS field office listed on the last page of these instructions.

16. Additional Information—Use Item 16 to provide additional information as indicated in Items 10, 15, 17, and 18 and in the instructions for Section X concerning labor organizations which have terminated. If there is not enough space in Item 16, report the additional information on a separate letter-size page. At the top of the page clearly print the name of your organization, its 6-digit file number as shown in Item 1 of the form, and the ending date of the reporting period as shown on the second line of Item 2.

17–18. Signatures—The original and one copy of completed Form LM–4 filed with OLMS must be signed by the president (or chief executive officer) and treasurer (or chief financial officer) of your organization. If the duties of the chief executive or chief financial officer are performed by officers other than the president and treasurer, the report may be signed by the other officers. If the report is signed by an officer other than the president or treasurer, enter the correct title in Item 17 or 18, cross out the printed title, and explain in Item 16 why the president or treasurer did not sign the report. Indicate the city and State where the report was signed and the telephone number at which the signatories conduct official business; include the area code. You do not have to report a private, unlisted telephone number.

X. Labor Organizations Which Have Terminated—If your organization has gone out of existence as a reporting labor organization, the last president and treasurer or the official responsible for winding up the affairs of your organization must file a terminal financial report for the period from the beginning of the fiscal year to the date of termination. A terminal financial report must be filed if your organization has disbanded, merged into another organization, or consolidated with other organizations to form a new organization. A terminal financial report is not required if your organization changed its affiliation but continues to function as a separate reporting labor organization.

The terminal financial report may be filed on Form LM–4 only if your organization:

—Filed its previous annual report on Form LM–4;
—Had total annual receipts of less than $10,000 for the part of the last fiscal year during which your organization existed; and
—Was not in trusteeship.

If not eligible to use Form LM–4, your organization must report on Form LM–2 or LM–3, as explained in Section II of these instructions.

To complete a terminal report on Form LM–4 follow the instructions in Section IX and in addition:

—Print the words "TERMINAL REPORT" at the top of Form LM–4.
—Enter the date your organization ceased to exist in Item 2 after the word "THROUGH."
—Print the words "TERMINAL REPORT" as the first entry in Item 16 and provide a detailed statement of the reason why your organization ceased to exist. Also provide the name and address of the person or organization that will retain the records of the terminated organization. If your organization merged with another labor organization, give that organization's name, address, and 6-digit file number.

Your organization's terminal financial report must be filed within 30 days after the date of termination. Contact the nearest OLMS field office listed below if you have questions about filing a terminal report.

Assistance may be obtained from the field offices of the U.S. Department of Labor's Office of Labor-Management Standards located in the following cities:

Albany, NY
Atlanta, GA

Boston, MA
Buffalo, NY
Chicago, IL
Cincinnati, OH
Cleveland, OH
Dallas, TX
Denver, CO
Detroit, MI
Grand Rapids, MI
Hato Rey, PR
Honolulu, HI
Houston, TX
Iselin, NJ
Kansas City, MO
Los Angeles, CA
Miami, FL
Milwaukee, WI
Minneapolis, MN
Nashville, TN
New Haven, CT
New Orleans, LA
New York, NY
Philadelphia, PA
Pittsburgh, PA
St. Louis, MO
San Diego, CA
San Francisco, CA
Seattle, WA
Tampa, FL
Vestavia Hills, AL
Washington, DC

Consult local telephone directory listings under United States Government, Labor Department, Office of Labor-Management Standards, for the address and telephone number of the nearest field office.

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Thursday, September 10, 1992

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H.R. 4111/P.L. 102-366

Small Business Credit and Business Opportunity Enhancement Act of 1992. (Sept. 4, 1992; 106 Stat. 986; 35 pages) Price: $1.25

Last List September 9, 1992

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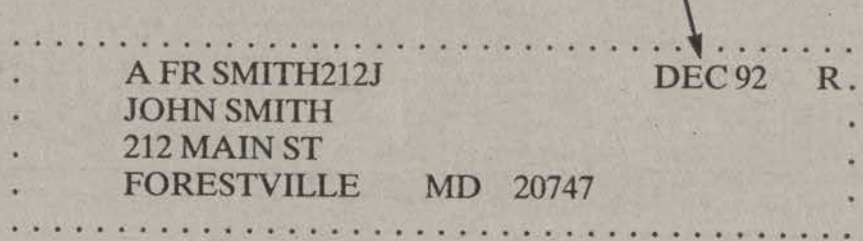

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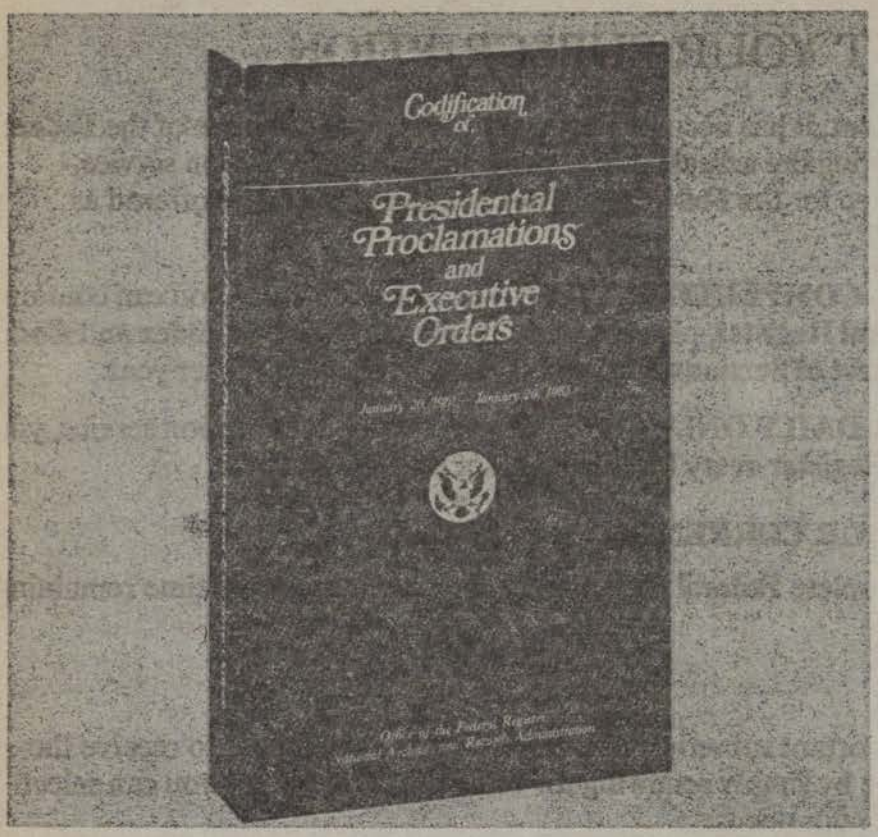

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